

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CRIMINAL TERM : PART 33

-----x  
THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

-against-

LORENZO MCGRIFF,

Defendant.

-----x  
Indict. No. 6248/15

JURY SELECTION

320 Jay Street  
Brooklyn, New York

December 14, 2016

B E F O R E :

HONORABLE MIRIAM CYRULNIK,  
Justice, and a jury.

(Appearances same as previously noted.)

VANESSA DEL VALLE  
Official Court Reporter

\* \* \* \*

THE CLERK: Calling number two from the Part  
33 calendar, indictment 6248 of 2015, Lorenzo McGriff.  
Case is continuing with jury selection.

THE COURT: Good morning, everyone.

MS. BURKE: Good morning.

Jamie Burke, Brooklyn Defender Services, 177  
Livingston Street, Brooklyn, New York 11201 on behalf  
of Mr. McGriff.

VdV

1 MR. WITTWER: Ben Wittwer, also on behalf of  
2 Mr. McGriff.

3 Good morning.

4 MR. MOTTOLA: Office of the District  
5 Attorney, Lawrence Mottola.

6 Good morning.

7 MS. D'AGOSTINO: Stephanie D'Agostino, Office  
8 of the District Attorney.

9 THE COURT: Good morning, everyone.

10 Good morning, Mr. McGriff. Have a seat.

11 We did before we bring in the panel, I will  
12 remind them about being here promptly, we had discussed  
13 excusing prospective juror number 16, Mr. Callwood.  
14 Yesterday afternoon when he was up at the bench he  
15 raised an issue about a prior contact and gave us,  
16 essentially in my mind, confusing information about the  
17 resolution of the contact. He indicated that he spent  
18 a night in jail. That there was indicated, I believe,  
19 that he took a plea and he mentioned something about  
20 five years probation but had no paperwork.

21 And based upon the information that he's  
22 related it's difficult for me at least to make a  
23 determination as to whether he pled guilty to a felony  
24 or that there was some issue that would disqualify him  
25 as a potential juror. And I think he made certain

1 other statements about his ability to reflect on his  
2 ability to be fair. And my recollection of our  
3 conversation up here as all four counsels were in  
4 agreement, he should be excused. Just want to --

5 MR. MOTTOLA: Yes.

6 MS. BURKE: Yes, Your Honor.

7 THE COURT: All right. So, we will seat the  
8 15, number 16. We will just keep the last gentleman to  
9 the side. He is going to be excused and send him back  
10 downstairs.

11 COURT OFFICER: Don't put him in the box.

12 THE COURT: Yes. He will be excused.

13 COURT OFFICER: Just tell him to go back down  
14 now.

15 THE COURT: Yes. Let's get the other 15.

16 (Whereupon, there was a pause in the  
17 proceedings.)

18 COURT OFFICER: Ready for the panel, Your  
19 Honor?

20 THE COURT: Yes. Thank you.

21 COURT OFFICER: Panel entering.

22 (Whereupon, the prospective jury entered the  
23 courtroom.)

24 THE CLERK: The prospective jury panel is  
25 present and seated in the box. For continuation of

1           voir dire. Good morning.

2                   THE COURT: Both sides waive the reading of  
3           that roll?

4                   MR. MOTTOLA: Yes.

5                   MS. BURKE: So waived, Your Honor.

6                   THE COURT: Thank you.

7                   Good morning, everyone.

8                   PROSPECTIVE JURY: Good morning.

9                   THE COURT: Well for those of you who were  
10          here on time, I thank you. We did ask everyone to be  
11          here at 9:45. That means 9:45 outside the courtroom  
12          door. Honestly we've been waiting for you for just  
13          about 45 minutes. And your fellow jurors have been  
14          waiting for, some of them for 45 minutes, waiting for  
15          you to be here.

16                   If you are selected for this jury you are  
17          required to be here when I tell you. This is a job.  
18          This is like work, it's like school. And you are  
19          required to be here. And if that means leaving time to  
20          get upstairs in the elevator if you are asked to be  
21          here at 9:30, you cannot be downstairs in the lobby at  
22          9:30.

23                   So as I said, this is an issue not only of  
24          being respectful of your fellow jurors' time and the  
25          attorneys' time and our time, but also the idea that

1           should we -- should you be selected, the approximate  
2           conclusion date that I gave you is dependent upon us  
3           being able to put in a full day's work. If we are  
4           required to wait 45 minutes or an hour for someone to  
5           appear, that's going to delay the trial and that's  
6           unacceptable.

7                       So, I am sure this is the only time that I  
8           will have to mention that. And again for those of you  
9           who were here on time, I thank you.

10                      All right. I believe yesterday I had asked  
11           everybody that because this is a criminal case there  
12           were police officers involved and there would be  
13           testimony from police officers, as well as civilians.  
14           And that in a trial a police officer is just like any  
15           other witness. I had asked if there was anyone who  
16           could not treat a police officer like any other  
17           witness. There was one person, one or two indicated  
18           some concerns. I think Mr. Auerbach and Miss Hidary  
19           plus Mr. Callwood.

20                      Was there anyone else whom I did not get to  
21           yesterday on this issue? Okay.

22                      Have any of you or any members of your family  
23           ever been the victim of a crime? Okay.

24                      Miss Billingslea.

25                      PROSPECTIVE JUROR: I got my wallet stolen.

1 I had it reported because my military I.D. was there.  
2 At the time they didn't have DOT numbers. It was  
3 social.

4 THE COURT: Was that here in Brooklyn?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: And you said it was reported?

7 PROSPECTIVE JUROR: Mmm-hmm.

8 THE COURT: Was anybody ever apprehended?

9 PROSPECTIVE JUROR: (Indicating).

10 THE COURT: Just need to hear your answer.

11 PROSPECTIVE JUROR: No.

12 THE COURT: Is there anything in either in  
13 the fact that this happened to you or your experience  
14 with the police in reporting, anything at all that  
15 would affect your ability to be fair and impartial?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you.

18 Other hand. Mr. Auerbach.

19 PROSPECTIVE JUROR: My wife was assaulted --

20 THE COURT: Sorry. I can't hear you.

21 PROSPECTIVE JUROR: My wife was assaulted on  
22 the street.

23 THE COURT: Sorry to hear that.

24 Was she injured?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Good.

2 And was this here in Brooklyn, Mr. Auerbach?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. Was it reported to the  
5 police?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Was anybody apprehended?

8 PROSPECTIVE JUROR: Not that we know.

9 THE COURT: How long ago was this?

10 PROSPECTIVE JUROR: Two years ago.

11 THE COURT: Okay. Is there anything in the,  
12 anything in her experience, what you observed, what the  
13 two of you discussed that would affect your ability to  
14 be fair and impartial here?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Okay. All right. Thank you.  
17 Other hands. Mr. Flounoy.

18 PROSPECTIVE JUROR: Yes. I was mugged under  
19 the Brooklyn Bridge. And also my apartment was broken  
20 into.

21 THE COURT: Let's start with the mugging.  
22 About how long ago was that?

23 PROSPECTIVE JUROR: About nine years ago.

24 THE COURT: Okay. Were you injured?

25 PROSPECTIVE JUROR: We, there were two of



1           them. We wrestled a little bit.

2           THE COURT: Okay. Was it reported to the  
3           police?

4           PROSPECTIVE JUROR: Yes.

5           THE COURT: Anybody apprehended?

6           PROSPECTIVE JUROR: No. I was just reporting  
7           the incident about the situation.

8           THE COURT: Okay. And when your apartment  
9           was burglarized, was anybody home at the time?

10          PROSPECTIVE JUROR: No one was home.

11          THE COURT: Good.

12          Was that reported?

13          PROSPECTIVE JUROR: Yes, it was.

14          THE COURT: Anybody apprehended in that case?

15          PROSPECTIVE JUROR: No.

16          THE COURT: Is there anything in either of  
17          those experiences, whether it's just the fact that they  
18          happened, the fact that nobody was apprehended, your  
19          encounters if you will with the authorities, anything  
20          that would affect your ability to be fair and impartial  
21          here?

22          PROSPECTIVE JUROR: No. Not at all.

23          THE COURT: Okay. Thank you.

24          Anybody else? Miss Jasarovic.

25          PROSPECTIVE JUROR: Last year my boyfriend



1 was mugged in front of our apartment and he was pretty  
2 hurt, but.

3 THE COURT: Sorry to hear that.

4 Recovered fully?

5 PROSPECTIVE JUROR: Yeah.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: My family and I survived  
8 the Bosnian war, so we are refugees.

9 THE COURT: So you saw quite a bit.

10 PROSPECTIVE JUROR: Well I was a child.

11 THE COURT: Was the -- let's talk about your  
12 boyfriend for just a minutes.

13 Was that reported to the police?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Was anybody ever apprehend?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Is there anything in what you  
18 observed or what he told you about the experience that  
19 would affect your ability to be fair and impartial  
20 here?

21 PROSPECTIVE JUROR: No. Would it -- no. I  
22 would be fair.

23 THE COURT: Okay. Is there anything about it  
24 that would make it hard for you to be fair and  
25 impartial here?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Okay. Anything -- how old were  
3 you when you came here?

4 PROSPECTIVE JUROR: I was four.

5 THE COURT: You were four.

6 Anything in what you recall of your childhood  
7 or what your parents might have talked about that in  
8 terms of those experiences in the war that would affect  
9 your ability to be fair and impartial here?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Okay. Thank you for that.

12 Anybody else? All right. No hands. Thank  
13 you.

14 Have any of you or any members of your family  
15 ever been arrested or convicted of a crime? Okay.

16 Mr. Ortega.

17 PROSPECTIVE JUROR: Mmm-hmm. My older  
18 half-brother was arrested for assault.

19 THE COURT: Was that here in Brooklyn?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: About how long ago?

22 PROSPECTIVE JUROR: I believe four years ago.  
23 I am not sure of the date.

24 THE COURT: And was the matter, did the  
25 matter go to trial?

1 PROSPECTIVE JUROR: I believe not. I think  
2 it was just arrested and let go.

3 THE COURT: If you recall, were the  
4 allegations made by somebody that he knew?

5 PROSPECTIVE JUROR: I believe it was an  
6 acquaintance.

7 THE COURT: Okay. Did you have any  
8 opportunity to come and watch any of the court  
9 proceedings before it was, or did it ever get to court?

10 PROSPECTIVE JUROR: I think it didn't go to  
11 court.

12 THE COURT: Okay. Is there anything in what  
13 you know of the experience or the entire situation that  
14 would affect your ability to be fair and impartial  
15 here?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. Thank you for that.  
18 Anybody else? Mr. Nelson.

19 PROSPECTIVE JUROR: Yes. My little cousin  
20 was --

21 THE COURT: I can't hear you.

22 PROSPECTIVE JUROR: My little cousin was  
23 charged with attempted murder.

24 THE COURT: Your cousin?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Was that here in Brooklyn?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Okay. About how long ago?

4 PROSPECTIVE JUROR: This year.

5 THE COURT: This year.

6 Is the case still pending?

7 PROSPECTIVE JUROR: No. It's over.

8 THE COURT: Was it resolved?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Was there a trial? A plea?

11 PROSPECTIVE JUROR: It was a trial.

12 THE COURT: It was a trial.

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Is your cousin currently  
15 incarcerated?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Did you come to court to watch  
18 any of the proceedings?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: You did. Okay.

21 Was there anything in that experience what  
22 you observed, anything at all, whether it was how the  
23 Judge behaved, how the, what the lawyers said, the  
24 defense lawyer, anything at all that would affect your  
25 ability to be fair and impartial here?

1 PROSPECTIVE JUROR: No.

2 THE COURT: If you recall, was the person who  
3 was the complaining witness someone known to your  
4 cousin? Did they know each other?

5 PROSPECTIVE JUROR: Through basketball I  
6 think.

7 THE COURT: Okay. All right. Thank you for  
8 that. Anybody else? Okay.

9 Have any of you ever served on a jury before?  
10 See some hands. Okay. Miss Barton.

11 PROSPECTIVE JUROR: Yep. It was a civil  
12 trial.

13 THE COURT: Here in Brooklyn?

14 PROSPECTIVE JUROR: It was actually  
15 Manhattan.

16 THE COURT: Oh, Manhattan.

17 PROSPECTIVE JUROR: Mmm-hmm.

18 THE COURT: And did the jury reach a verdict?

19 PROSPECTIVE JUROR: They settled.

20 THE COURT: Okay. That does tend to happen.

21 PROSPECTIVE JUROR: Yeah.

22 THE COURT: Was there anything in your  
23 experience as a juror there that would affect your  
24 ability to be fair and impartial here?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Okay. Thank you.

2 Other hands I know I saw.

3 Yes, Mr. Nelson, civil, criminal, grand jury?

4 PROSPECTIVE JUROR: Three different juries.

5 One was criminal in Manhattan. Two were civil.

6 THE COURT: Let's talk about the criminal  
7 case first.

8 Do you remember what kind of case it was?

9 PROSPECTIVE JUROR: Yes. It was a murder  
10 case.

11 THE COURT: And without telling us the  
12 outcome, did the jury deliberate and reach a verdict?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Was there anything in your  
15 experience as a juror on this case that would affect  
16 your ability to be fair and impartial here?

17 PROSPECTIVE JUROR: No. In fact, I thought  
18 we did a good job and everything worked as planned.

19 THE COURT: How about the civil cases? Was  
20 there a jury deliberation or did they settle?

21 PROSPECTIVE JUROR: One, I was an alternate.  
22 I never got to know how it turned out. The other one  
23 there was a resolution.

24 THE COURT: Okay. Anything about your  
25 experiences there, perhaps frustrating you didn't get

1 to see it through to the end.

2 PROSPECTIVE JUROR: Yes. That one, again,  
3 that's the job of the alternate.

4 THE COURT: Anything that would impact your  
5 ability to be fair and impartial here?

6 PROSPECTIVE JUROR: No. It worked well.

7 THE COURT: How long ago was that criminal  
8 trial, if you recall?

9 PROSPECTIVE JUROR: 2003.

10 THE COURT: Yes, Mr. Mendez.

11 PROSPECTIVE JUROR: Criminal case.

12 THE COURT: Okay. Here in Brooklyn?

13 PROSPECTIVE JUROR: Brooklyn, yes.

14 THE COURT: About how long ago?

15 PROSPECTIVE JUROR: Maybe about 14 years.

16 THE COURT: Do you remember what kind of case  
17 it was?

18 PROSPECTIVE JUROR: Murder case.

19 THE COURT: Murder case.

20 And without telling us the outcome, did the  
21 jury deliberate and reach a verdict?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Okay. Was there anything in your  
24 experience as a juror on this case that would make it  
25 hard to be fair and impartial here?



1 PROSPECTIVE JUROR: No.

2 THE COURT: Okay. Anybody else?

3 And finally, at the end of the trial I am  
4 going to explain the law to you as it applies in this  
5 case. And if you are selected as a juror, then you are  
6 required to follow the law as I give it to you, whether  
7 you agree with it or not.

8 There anyone among you who could not do that?  
9 Mr. Auerbach.

10 PROSPECTIVE JUROR: Yeah. If I can't make a  
11 blanket promise, not nullify.

12 THE COURT: Okay. And that is for every kind  
13 of case no matter what?

14 PROSPECTIVE JUROR: It, like I said, I can't  
15 make a blanket promise.

16 THE COURT: Well give me an example of the  
17 kind of case where that might be a consideration for  
18 you.

19 PROSPECTIVE JUROR: Like a nonviolent drug  
20 offense.

21 THE COURT: Okay. This is not that kind of a  
22 case.

23 PROSPECTIVE JUROR: Right.

24 THE COURT: So, since we are not talking  
25 about, for example, a marijuana charge or something of

1           that nature, does this make a difference in your  
2           thinking?

3                   PROSPECTIVE JUROR: It's, I still wouldn't, I  
4           still can't make a blanket promise.

5                   THE COURT: Okay. Miss Laplante, yes.

6                   PROSPECTIVE JUROR: May I approach, please?

7                   THE COURT: Come on up, counsels.

8                   (Whereupon, there was a discussion held at  
9           the bench on the record.)

10                  PROSPECTIVE JUROR: Morning.

11                  THE COURT: Morning.

12                  PROSPECTIVE JUROR: I am sorry for my  
13           lateness this morning. My husband is blind. Gets sick  
14           last night, so I have to stay a little bit to take care  
15           of.

16                  I have another situation. Very emotional  
17           person. I can't make decision.

18                  THE COURT: Miss Laplante, you have been  
19           living in Brooklyn for over 30 years. You work full  
20           time, correct?

21                  PROSPECTIVE JUROR: Yes.

22                  THE COURT: No one said this is an easy  
23           proposition. No one says it's easy. But it's  
24           something that it's an obligation that we all have as  
25           citizens to undertake that.

1 PROSPECTIVE JUROR: I understand.

2 THE COURT: Now, assuming that, for example,  
3 we will not be working after jury selection today, we  
4 won't be working for the rest of the day, will not be  
5 working on Friday afternoon. So, would that be able  
6 to, with that said, you will be able to attend to your  
7 husband's other needs as we go forward. So.

8 PROSPECTIVE JUROR: For right now my sister,  
9 she has a baby-sit for three days. The rest of the  
10 days she had --

11 THE COURT: Right. Okay.

12 You also have two children you said.

13 PROSPECTIVE JUROR: Yes, no, they're big.  
14 They don't live in New York. I got my, a lot on my  
15 shoulders.

16 THE COURT: So do many, many people.

17 PROSPECTIVE JUROR: I know. I mean I can't  
18 think straight when I am nervous, so.

19 THE COURT: Everyone's nervous when they're  
20 here on jury duty.

21 PROSPECTIVE JUROR: Not on jury duty. I  
22 don't know. To me, yes, I am asking --

23 THE COURT: Have a seat, please. Thank you.

24 PROSPECTIVE JUROR: Okay.

25 (Whereupon, the following took place on the

1 record in open court.)

2 THE COURT: All right. Anybody else I have  
3 not spoken to about following the law? Okay.

4 So that finishes my questions. The attorneys  
5 of course will now have an opportunity to speak with  
6 you. We will start with Mr. Mottola.

7 Reminder, counsel, it's ten minutes.

8 MR. MOTTOLA: Yes.

9 Good morning, everyone.

10 PROSPECTIVE JURY: Good morning.

11 MR. MOTTOLA: You probably know what I am  
12 going to ask you because I asked the first two panels  
13 the same questions.

14 If during this process you have anything you  
15 want to bring to my attention, just raise your hand. I  
16 will not have time to get to everybody. I do want to  
17 start with the first issue is that, again, you are not  
18 going to hear from Mr. Kalifa. Right. The victim in  
19 this case. That was a problem for some people  
20 yesterday.

21 I need to know if there are some people  
22 sitting here now feel even if I meet my burden and I  
23 prove Mr. McGriff's guilt beyond a reasonable doubt,  
24 you could not return a guilty verdict unless you heard  
25 from the victim himself. So, I need to know that now

1 if there is anyone sitting here who feels like that.

2 Mr. Mendez, how do you feel about that?

3 PROSPECTIVE JUROR: Okay.

4 MR. MOTTOLA: You would be okay with that?

5 PROSPECTIVE JUROR: My question is this.

6 MR. MOTTOLA: Sure.

7 PROSPECTIVE JUROR: Is this a case, a

8 manslaughter murder?

9 THE COURT: I can't hear you, sir.

10 PROSPECTIVE JUROR: Is this a case of

11 manslaughter? Why he can't be here?

12 THE COURT: Not a manslaughter case.

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: No.

15 MR. MOTTOLA: Right.

16 PROSPECTIVE JUROR: Why can't he be here?

17 MR. MOTTOLA: Right. Like I said yesterday,

18 you're not going to, you may not get an answer to that

19 question, why the person's not here.

20 THE COURT: Let me jump in again if I can,

21 Mr. Mottola.

22 MR. MOTTOLA: Yes.

23 THE COURT: As I mentioned yesterday, the

24 People have the burden of proving the case and each

25 element of each charge beyond a reasonable doubt.

1 Beyond that, there's nothing specific about how they do  
2 that. There is no requirement that they prove their  
3 case in a particular way.

4 What your function will be as jurors if you  
5 are selected, is to listen to the evidence and  
6 determine whether if there is evidence that you find to  
7 be credible and believable. Essentially if it's enough  
8 without -- now you may not speculate about other  
9 evidence. You may not speculate about anything beyond  
10 what you hear in the courtroom.

11 Again, you may hear testimony from  
12 Mr. McGriff, you may not. If he choses not to testify  
13 or present witnesses for the defense, you cannot hold  
14 that against him, because the burden remains, always  
15 remains with the district attorney.

16 So it may, there may be a situation where you  
17 do not hear the famous both sides of the story, that  
18 you don't hear from the complaining witness. You may  
19 hear evidence from other witnesses, eyewitnesses,  
20 depending upon how the People choose to present their  
21 case.

22 Your job then would be to evaluate what you  
23 do hear. Determine if you find it credible, if you  
24 find it believable. And then essentially decide if  
25 it's enough to meet that burden.

1 So can you follow that instruction?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Okay.

4 MR. MOTTOLA: Okay. Miss Billingslea.

5 PROSPECTIVE JUROR: I could totally.

6 MR. MOTTOLA: Okay. Mr. Ortega.

7 PROSPECTIVE JUROR: I have no problem.

8 MR. MOTTOLA: Okay. Miss Best.

9 PROSPECTIVE JUROR: Yeah. No problem.

10 MR. MOTTOLA: You would be okay with that.

11 Okay.

12 Anyone here who felt similarly to how

13 Mr. Mendez felt? Miss Hidary.

14 PROSPECTIVE JUROR: I would just think  
15 listening to what the Judge says, then at the end I  
16 would always have that little thing in my brain why  
17 isn't he here. What would he say? What is his  
18 opinion.

19 I know your job is to prove it to the best  
20 you can. Back here I am gonna go, so why isn't he  
21 here? There has to be his side. Yesterday we had the  
22 girl being attacked on the train, she was running. She  
23 said people didn't respond, but maybe they thought it  
24 was her boyfriend, that's why. We didn't have -- if I  
25 am not having his opportunity to say his peace. I



1 don't know.

2 MR. MOTTOLA: Right.

3 PROSPECTIVE JUROR: That's, you know, I  
4 understand that you are gonna present all your points  
5 the best that you can, but I don't know if for sure in  
6 the back of my head I am going to go, well why isn't he  
7 here? What was he defending himself? What were --

8 MR. MOTTOLA: Miss Barton, you were nodding.  
9 You feel similarly?

10 PROSPECTIVE JUROR: I do.

11 MR. MOTTOLA: The fact this person is not  
12 going to come to court, obviously that's something that  
13 I have to deal with, right? That's my job.

14 But what I am asking you is, are you going to  
15 be able to listen to whatever eyewitnesses come in and  
16 the police officers and see what other evidence there  
17 is, if there is a 911 caller, a video, and if you feel  
18 that that is enough, right? As if you feel that the  
19 evidence that I submit to you meets the burden.

20 I have to meet, as the Judge gives you the  
21 law, could you return a verdict of guilty, or are you  
22 saying you could not even if you did believe the  
23 witnesses? That's what we are trying to get to.

24 PROSPECTIVE JUROR: Right. I don't know if I  
25 can say it for sure. Probably. But, you know, I don't

1 know what the evidence that's going to come up. I  
2 can't make that statement because I have to be  
3 convinced.

4 MR. MOTTOLA: I am going to give you a hypo I  
5 have seen other Judges use on jurors.

6 Say you are on the plane. The pilot says he  
7 thinks he can land the plane. Are you going to get on  
8 the plane or do you want the pilot to say I can land  
9 the plane? I need to hear from you, you can follow the  
10 law, not that you think you --

11 PROSPECTIVE JUROR: Of course I want to  
12 follow the law. My goal is to follow the law. But at  
13 the end of the day I am still human. I still have  
14 that, you know.

15 MR. MOTTOLA: Right. Okay.

16 Miss Barton, how do you feel about this  
17 sentence? You were nodding. Do you feel like you  
18 could listen?

19 PROSPECTIVE JUROR: Absolutely. Absolutely.

20 MR. MOTTOLA: Can you be a fair juror?

21 PROSPECTIVE JUROR: Yes.

22 MR. MOTTOLA: Anyone else who feels  
23 similarly, anybody, that it would be an issue they  
24 could not deliberate fairly on this case if they don't  
25 hear from Mr. Kalifa? No one. Everyone else is okay?

1 All right.

2 So just moving on briefly to the police  
3 officers. You will hear from at least one police  
4 officer in this case, maybe more.

5 So, Miss Hidary, you mentioned you have a  
6 bias in favor of the police.

7 PROSPECTIVE JUROR: The police officer in my  
8 eyes, the way I was brought up, he is taking an oath  
9 taking care of me as a citizen, and I would put his  
10 word a little bit higher than the regular person. He  
11 is not, I don't know what that guy on the street saw.  
12 He might have had an incident with the person two weeks  
13 ago. I don't know that. But I know the police  
14 officer, he has an obligation in his job to take care  
15 of the citizens of the state. I hold his word higher  
16 than that person I don't know where he is coming from.

17 MR. MOTTOLA: Does anyone feel -- I know,  
18 Mr. Auerbach, you mentioned you feel the opposite way.  
19 I just want everyone to understand the law says you  
20 have to treat a police officer, like the Judge said,  
21 like any other witness.

22 So, if you have one of those feelings, you  
23 have to promise us that you are not going to either  
24 give the police officers more credibility or you are  
25 going to have some past experience weigh against these

1 police officers because you don't know, right? It's  
2 not fair to me. It would not be fair to Mr. McGriff  
3 either. So you need to let us know.

4 Outside of it, Mr. Auerbach and Miss Hidary,  
5 does anyone else have any kind of reservation or, you  
6 know, bias in favor or against police? No one.

7 Mr. Ortega, you work in police. You are not  
8 going to let that affect your judgment?

9 PROSPECTIVE JUROR: No.

10 MR. MOTTOLA: You can be fair in this case?

11 PROSPECTIVE JUROR: Yes.

12 MR. MOTTOLA: Okay. Just one last point,  
13 everyone.

14 At the end of the case if you are picked to  
15 sit on the jury, you are going to have to go in the  
16 back, work together. And you know this is a criminal  
17 action, right? There is a real possibility if I meet  
18 my burden you will have to follow the law and  
19 potentially return a verdict of guilty. Okay.

20 I need your assurance now that if you are  
21 picked and you believe the evidence and I meet my  
22 burden, I prove guilt beyond a reasonable doubt, that  
23 you can set aside any kind of sympathy or emotion you  
24 have, you can return that verdict.

25 Can everyone do that?

1 PROSPECTIVE JUROR: Yes.

2 PROSPECTIVE JUROR: Yes.

3 MR. MOTTOLA: Everyone can do that, yes?

4 Okay. Thank you.

5 THE COURT: Miss Burke. Thank you.

6 MS. BURKE: Good morning.

7 PROSPECTIVE JUROR: Good morning.

8 MS. BURKE: I know you made the promise that  
9 you could return a verdict of guilty if he meets all of  
10 his elements. I need the same promise from you if he  
11 doesn't meet all of his elements that you can return a  
12 verdict of not guilty.

13 PROSPECTIVE JUROR: Yes.

14 MS. BURKE: Would you do that, Mr. Mendez?

15 PROSPECTIVE JUROR: Sure.

16 MS. BURKE: Would you do that,  
17 Miss Billingslea?

18 PROSPECTIVE JUROR: Yes.

19 MS. BURKE: Mr. Ortega.

20 PROSPECTIVE JUROR: Yes.

21 MS. BURKE: Even if your cop friends laugh at  
22 you?

23 PROSPECTIVE JUROR: They're not my friends.

24 (Whereupon, there was laughter in the  
25 courtroom.)

1 MS. BURKE: Okay. And Miss Best.

2 PROSPECTIVE JUROR: Yes.

3 MS. BURKE: Mr. Nelson --

4 THE COURT: Just need to hear everybody's  
5 voice nice and loud, please.

6 PROSPECTIVE JUROR: Yes.

7 MS. BURKE: Miss Laplante.

8 PROSPECTIVE JUROR: Yes.

9 MS. BURKE: Mr. Flounoy.

10 PROSPECTIVE JUROR: Yes.

11 (Whereupon, there was laughter in the  
12 courtroom.)

13 MS. BURKE: Got to say it right.

14 PROSPECTIVE JUROR: You got it right.

15 MS. BURKE: Bear with me. Jasarovic.

16 THE COURT: I have the name like Cyrulnik.  
17 It's very hard.

18 PROSPECTIVE JUROR: It's okay. Yes.

19 THE COURT: The J is like a Y. Emphasis on  
20 the Jasarovic.

21 MS. BURKE: Jasarovic.

22 THE COURT: Close. Better.

23 MS. BURKE: Better. Okay.

24 (Whereupon, there was laughter in the  
25 courtroom.)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. BURKE: I like the way she says it.

Okay.

PROSPECTIVE JUROR: Okay. Yes.

MS. BURKE: I know that you were mugged.

PROSPECTIVE JUROR: My boyfriend.

MS. BURKE: Your boyfriend, sorry, was mugged. And it was reported and there was no arrest.

The fact that there was no arrest in your case, you wouldn't take that out on Mr. McGriff when you are deliberating, would you?

PROSPECTIVE JUROR: No.

MS. BURKE: Okay. Anybody else who had an incident?

Mr. Flounoy, you were mugged.

PROSPECTIVE JUROR: Yes.

MS. BURKE: By two people.

PROSPECTIVE JUROR: Kids. Like 19, 20.

MS. BURKE: And there was no arrest.

PROSPECTIVE JUROR: No.

MS. BURKE: The fact that that encounter with you under the Brooklyn Bridge, would that have any affect on your ability to sit in judgment on case?

PROSPECTIVE JUROR: Not at all. He's innocent until whatever.

MS. BURKE: I like those words. Say that



1 again loud so everybody can hear.

2 PROSPECTIVE JUROR: He is innocent until the  
3 burden of proof.

4 MS. BURKE: Has been met.

5 PROSPECTIVE JUROR: Yes.

6 MS. BURKE: By the District Attorney's  
7 Office.

8 PROSPECTIVE JUROR: Mmm-hmm.

9 MS. BURKE: Everybody in agreement with that  
10 statement?

11 PROSPECTIVE JUROR: Yes.

12 MS. BURKE: That Mr. McGriff sitting right  
13 here today, tomorrow and the next day until you go into  
14 that deliberation room and 12 of you say guilt beyond a  
15 reasonable doubt, that until that happens he is  
16 innocent, presumed innocent by each and every one of  
17 you.

18 I get that promise from all of you?

19 PROSPECTIVE JUROR: Yes.

20 PROSPECTIVE JUROR: Yes.

21 MS. BURKE: Okay. So we talked about people  
22 who have previously served as jurors on cases, civil  
23 juries or criminal juries, right? Anybody ever served  
24 as a witness on a jury? On a case? Nobody's been a  
25 witness.

1           Mr. Mendez, you seemed a little concerned  
2           about why the complaining witness would not be here.  
3           We don't know why. You probably will never get an  
4           answer to that question. I want to make sure that the  
5           fact that you don't know why that person is not here  
6           isn't going to influence your ability to judge this  
7           case fairly.

8           Is it going to affect your ability to judge  
9           this case fairly?

10          PROSPECTIVE JUROR: No.

11          MS. BURKE: He said.

12          THE COURT: Thank you.

13          MS. BURKE: Miss Hidary, you are an  
14          interesting person. So, you say that you hold the  
15          police to a higher standard. That's just because  
16          they're in uniform and they're police officers and  
17          serve the City of New York? That's the only reason?

18          PROSPECTIVE JUROR: Yeah.

19          MS. BURKE: So, do you hold any other  
20          profession to that same standard, to a higher standard?

21          PROSPECTIVE JUROR: You know, I am Jewish and  
22          I am religious person. And in our religion, people  
23          that have that position are held to a higher standard  
24          and that's the way I was brought up.

25          So, yeah, I do feel a police officer that is

1           supposed to be protecting me and have this position to  
2           care for the better of the community should be held to  
3           a higher standard and should be respected a little  
4           more.

5                     If a Judge get up says, and the Judge is  
6           brought as a witness, I am going to hold her a little  
7           bit higher than the next person because she knows her  
8           responsibility. And she's, she has, she should have  
9           more credibility. That's the way I feel. That's the  
10          way I was brought up.

11                    MS. BURKE: So if a rabbi came in to testify  
12          and the rabbi said to you that sweater that you're  
13          wearing is blue, it is not black, and you know  
14          absolutely for a fact that you are wearing a black  
15          sweater, you would still hold that rabbi to a higher  
16          standard?

17                    PROSPECTIVE JUROR: I hold his word to a  
18          higher standard. I respect him more. You know, those  
19          things going on with the phones, is the dress gray, is  
20          the dress green, right? That whole thing that was  
21          going on on social media.

22                    You're right if I know it's a black shirt  
23          (indicating). But this is the way I feel with a person  
24          that has, that is on this little level a little bit  
25          above the regular person. I hold them, I respect them

1 more. Nobody's perfect. I am sure there is a police  
2 officer that's corrupt. I am sure there is a rabbi  
3 that's corrupt. But given the generality, I hold them  
4 to a higher standard. That's basically what it is.

5 MS. BURKE: Thank you for your honesty.

6 So let's just get on this a little bit. If  
7 there is a police officer that gets up here, say you  
8 want to hold them to a higher standard because they're  
9 protecting the community. You want to give them that  
10 extra bit of trust, but they get up there and blatantly  
11 lie or blatantly say something that does not make sense  
12 to you. Are you going to say, well he's a police  
13 officer. I am still going to believe him.

14 Would anybody do that? I see heads shaking  
15 no. I like hearing things.

16 PROSPECTIVE JUROR: No.

17 PROSPECTIVE JUROR: No.

18 THE COURT: Two minutes, counsel.

19 MS. BURKE: Mr. Flounoy, in your prior trial  
20 experience you said everything worked out as planned.

21 Can you explain to me what you mean by that?

22 THE COURT: I need to hear everybody's  
23 answer.

24 PROSPECTIVE JUROR: Sure.

25 I think the jury process worked well. We

1 considered all the facts. We, some of us disagreed in  
2 the beginning, we talked to each other. Came out 12  
3 people agreeing and I thought that worked well.

4 MS. BURKE: Okay.

5 PROSPECTIVE JUROR: It was nice to see that.

6 MS. BURKE: Can I get an assurance from  
7 everyone if you are picked to serve on this jury that  
8 you will work well with the others? You can agree to  
9 disagree?

10 PROSPECTIVE JUROR: Yes.

11 MS. BURKE: You will be respectful to each  
12 other?

13 PROSPECTIVE JUROR: Yes.

14 MS. BURKE: And you will vote what your heart  
15 and your mind tells you to vote?

16 PROSPECTIVE JUROR: Yes.

17 MS. BURKE: Even if 11 people are against  
18 you, you will still stick with your vote, even if 11  
19 people are with you, you will still stick with your  
20 vote?

21 PROSPECTIVE JUROR: Yes.

22 MS. BURKE: Ten people want hamburgers, two  
23 people want hot dogs, you are going to still want your  
24 hot dog?

25 PROSPECTIVE JUROR: Yes.



1 PROSPECTIVE JUROR: No, I don't. I don't  
2 care that much. I mean I care about his life, but if  
3 ten people want a hamburger, I wanted a hot dog today,  
4 you know what, tomorrow I will eat a hot dog. That's  
5 my personality. I will not fight the mass. I am not  
6 that way. I am going to do --

7 THE COURT: Do you all understand somebody  
8 mentioned yesterday majority rules?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: This is not one of those  
11 situations.

12 PROSPECTIVE JUROR: Right. I understand it's  
13 not a majority rules. I have to be able to fight them.  
14 I don't know. I am that person that could dissuade ten  
15 other people to believe what I believe.

16 MS. BURKE: Okay.

17 THE COURT: Well I just want to be clear for  
18 everybody who is selected as a juror, your obligation  
19 is to consider the evidence and weigh it for yourselves  
20 first to evaluate it and discuss it with your fellow  
21 jurors. And that may include going back and forth to  
22 discuss an issue and try to persuade someone else,  
23 etcetera.

24 But your first obligation is to consider all  
25 of the evidence for yourselves individually.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Do you understand that?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Thank you.

MS. BURKE: Can I get a promise from everyone that you will do that, no matter what your vote is? That's what you feel your vote is. You are going to stick to your vote, no matter how many people try to sway you a different way?

PROSPECTIVE JUROR: Yes.

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Thank you.

MS. BURKE: Thank you.

THE COURT: All right, ladies and gentlemen, and folks in the audience, we will have you step out into the hall for just a few minutes, call you back in. Please don't discuss the case amongst yourselves or anyone else. And we will see you in just a little bit.

Thank you.

(Whereupon, the prospective jury left the courtroom.)

(Whereupon, there was a pause in the proceedings.)

THE COURT: All right. Let me know when you are ready.

(Whereupon, there was a pause in the



1 proceedings.)

2 THE COURT: Okay. People ready?

3 MR. MOTTOLA: I am ready. Yes.

4 THE COURT: Miss Burke, you ready?

5 MS. BURKE: Yes, Your Honor.

6 THE COURT: Okay.

7 THE CLERK: As to first two seats -- just a  
8 reminder, at the end of yesterday, People used six  
9 peremptory challenges, the defense, eight.

10 MS. BURKE: Yes.

11 THE COURT: All right.

12 THE CLERK: That's correct.

13 As to the first two seats, People, challenges  
14 for cause.

15 MR. MOTTOLA: None for cause.

16 THE CLERK: Miss Burke, challenges for cause  
17 as to the first two seats?

18 MS. BURKE: None for cause.

19 THE CLERK: Okay. People, peremptory  
20 challenges as to either of those two seats?

21 MR. MOTTOLA: Yes. Seat number one, Glen  
22 Mendez.

23 THE CLERK: Is that it, Mr. Mottola?

24 MR. MOTTOLA: Yes.

25 THE CLERK: Okay. Miss Burke, any peremptory

1 challenges as to seat number two?

2 MS. BURKE: Number two, Your Honor.

3 THE COURT: Number two what?

4 MS. BURKE: Seat number two. Sorry, Your  
5 Honor. We are challenging -- peremptory on seat number  
6 two. I apologize.

7 THE CLERK: That's Simone Billingslea.

8 MS. BURKE: Yes.

9 THE CLERK: Okay. As to seats three and  
10 four, People, any challenges for cause?

11 MR. MOTTOLA: None for cause.

12 THE CLERK: Miss Burke, any challenges for  
13 cause as to seats three or four?

14 THE COURT: Let's go. Seats three or four.

15 THE CLERK: Challenges for cause.

16 MS. BURKE: No, Your Honor.

17 THE CLERK: People, peremptory challenges as  
18 to seats three or four?

19 MR. MOTTOLA: Seat number four, Yvonne Best.

20 THE CLERK: Yvonne Best.

21 Miss Burke, peremptory challenge as to seat  
22 number three?

23 MS. BURKE: Seat number three, Your Honor.

24 THE CLERK: You want to exercise your  
25 challenge?

1 MS. BURKE: Yes.

2 THE COURT: Do me a favor. Don't make us  
3 guess, okay.

4 MS. BURKE: I am sorry.

5 THE COURT: Okay.

6 THE CLERK: As to the next two seats, five  
7 and six, People, challenge as to cause for either of  
8 those two?

9 MR. MOTTOLA: Seat number five for cause.

10 MS. BURKE: Consent.

11 THE CLERK: Consent on Hidary.

12 As to seat number six, challenge for cause,  
13 Mr. Mottola?

14 MR. MOTTOLA: No, not for cause.

15 THE CLERK: Miss Burke.

16 MS. BURKE: None for cause.

17 THE CLERK: People, peremptory challenge as  
18 to seat number six?

19 MR. MOTTOLA: Yes. Peremptory challenge.

20 THE CLERK: As to seats seven and eight,  
21 challenges for cause, People?

22 MR. MOTTOLA: No.

23 THE CLERK: Miss Burke, challenges for cause  
24 as to seat seven or eight?

25 MS. BURKE: No, Your Honor.

1 THE CLERK: Mr. Mottola, peremptory challenge  
2 as to seat seven or eight?

3 MR. MOTTOLA: No.

4 THE CLERK: Miss Burke, want to exercise any  
5 peremptories for seat seven or eight?

6 MS. BURKE: No peremptory challenges.

7 THE CLERK: As to seat seven or eight.

8 MS. BURKE: Correct.

9 THE CLERK: Okay. That means seat number  
10 seven, Victoria Jones, will become juror number 11.  
11 Seat number eight, Suncica Jasarovic, becomes juror  
12 number 12.

13 Okay. As to alternate number one, seat  
14 number nine, David Auerbach.

15 MR. MOTTOLA: For cause, yes.

16 THE CLERK: You would?

17 MR. MOTTOLA: Yes. Based on he could not --  
18 I mean yes, he said he could not promise he will not  
19 nullify.

20 MS. BURKE: Consent.

21 THE COURT: Thank you.

22 THE CLERK: As to seat number 10, People,  
23 challenge for cause?

24 MR. MOTTOLA: No.

25 THE CLERK: Miss Burke, challenge for cause

1 as to seat number 10?

2 MS. BURKE: No challenge for cause.

3 THE CLERK: People, peremptory challenge as  
4 to seat number 10?

5 MR. MOTTOLA: No.

6 THE CLERK: Miss Burke.

7 MS. BURKE: Yes. We will exercise a preempt  
8 for seat number 10.

9 THE CLERK: Okay. As seat number 11, People,  
10 challenge for cause?

11 MR. MOTTOLA: No.

12 THE CLERK: Miss Burke, challenge for cause  
13 as to seat number 11?

14 MS. BURKE: No.

15 THE CLERK: People, peremptory challenge as  
16 to seat number 11?

17 MR. MOTTOLA: No.

18 THE CLERK: Miss Burke, would you like to  
19 exercise as peremptory challenge as to seat number 11?  
20 That's Christopher Fanelli.

21 MS. BURKE: Exercise a peremptory, Your  
22 Honor.

23 THE CLERK: As to seat number 12, People,  
24 challenge for cause?

25 MR. MOTTOLA: No.

1 THE CLERK: Miss Burke, challenge for cause  
2 as to seat number 12?

3 MS. BURKE: No.

4 THE CLERK: People, peremptory challenge as  
5 to seat number 12?

6 MR. MOTTOLA: Yes.

7 THE CLERK: Yes?

8 MR. MOTTOLA: Yes.

9 THE CLERK: As is to seat number 13, People,  
10 challenge for cause?

11 MR. MOTTOLA: No.

12 THE CLERK: Miss Burke, challenge for cause  
13 as to seat number 13?

14 MS. BURKE: No.

15 THE CLERK: People, peremptory challenge as  
16 to seat number 13?

17 MR. MOTTOLA: Yes.

18 THE CLERK: As to seat number 14, People,  
19 challenge for cause?

20 MR. MOTTOLA: No.

21 THE CLERK: Miss Burke, challenge for cause?

22 MS. BURKE: No.

23 THE COURT: All right. Both sides used their  
24 peremptories for that seat.

25 THE CLERK: Correct.

1 THE COURT: Both --

2 THE CLERK: Seat number 14 -- you have used  
3 two on the last.

4 MR. MOTTOLA: Yes.

5 THE COURT: And they used two.

6 THE CLERK: Yes, they have.

7 Seat number 14, William Flounoy, junior,  
8 becomes alternate juror number one.

9 And as to the final seat number 15, People,  
10 challenge for cause, Elyse Barton?

11 MR. MOTTOLA: No.

12 THE CLERK: Miss Burke, challenge for cause?

13 MS. BURKE: No.

14 THE CLERK: People, peremptory challenge as  
15 to seat number 15?

16 MR. MOTTOLA: Yes. You want to compromise on  
17 someone?

18 THE CLERK: That's the last person.

19 MR. MOTTOLA: I know. Compromise with  
20 someone.

21 THE COURT: See if you can agree.

22 MR. MOTTOLA: Yes.

23 THE COURT: Not bringing up a supplemental  
24 panel for one alternate.

25 MR. MOTTOLA: I understand.



1 MS. BURKE: One moment.

2 (Whereupon, there was a pause in the  
3 proceedings.)

4 MR. MOTTOLA: Judge, I spoke to counsel --

5 MS. BURKE: One moment.

6 MR. MOTTOLA: Okay.

7 (Whereupon, there was a pause in the  
8 proceedings.)

9 MR. MOTTOLA: Yes. So I spoke to counsel and  
10 we have agreed that seat number 12, who was Shaquan  
11 Nelson, would be the second alternate.

12 THE COURT: Miss Burke, you've discussed that  
13 with your client as well?

14 MS. BURKE: Yes.

15 THE COURT: Okay.

16 THE CLERK: So seat number 12 will become  
17 alternate number two.

18 MR. MOTTOLA: Yes.

19 MS. BURKE: Judge.

20 MR. WITTWER: Your Honor, at this time I need  
21 to raise a Batson challenge based on the jury  
22 selection. I have all the information in front of me  
23 if Your Honor is ready.

24 Between panel one, the first jury panel, the  
25 People exercised two peremptory challenges both on

1 African Americans. The first was juror number 11,  
2 Khandija Barrow. And the second was juror --

3 THE COURT: Just a moment. Hold on a second.  
4 (Whereupon, there was a pause in the  
5 proceedings.)

6 THE COURT: Go ahead.

7 MR. WITTWER: Thank you.

8 So juror number 11, Khandija Barrow, juror  
9 number 12, Ashley Dunn. Neither juror made really any  
10 statements during voir dire went one way or the other.  
11 Both are African Americans.

12 On the second panel the People used four  
13 peremptory challenges, three of which were used on  
14 African Americans. That the African Americans that  
15 they challenged were juror number six, Gerard Philip,  
16 juror number 11, Andrea Solstad, and juror number 15,  
17 Pauline Stewart.

18 The People also used a peremptory challenge  
19 on juror number nine, Tara Cascone, who was Caucasian.

20 While Andrea Solstad, juror number 11, did  
21 make a number of voir dire statements about her recent,  
22 you know, crime she had been a victim of. Juror six  
23 and 15 said virtually nothing during voir dire. Both  
24 are African American.

25 The most recent panel, the third and final

1 panel, the People challenged juror number one, Glen  
2 Mendez, juror number four, Yvonne Best, juror number  
3 six --

4 THE COURT: Mr. Mendez I think is Hispanic.  
5 Go ahead.

6 MR. WITTWER: Just for the record, I would  
7 disagree.

8 THE COURT: Okay. You disagree with that.  
9 Okay.

10 MR. WITTWER: Obviously his last name  
11 suggests --

12 THE COURT: Yes.

13 MR. WITTWER: He appeared to me to be African  
14 American. For the record, he is dark complexion.

15 THE COURT: I see.

16 MR. WITTWER: Juror number -- so pardon me.

17 Your Honor, juror number one, Glen Mendez,  
18 juror number four, Yvonne Best, juror number six,  
19 Molina Grant, juror number 12, Shaquan Nelson, who I  
20 understand they will be second alternates, they  
21 exercised one of his peremptory where he would have  
22 been one of the main 12 jurors.

23 Juror number 13, Marlene Laplante. That's  
24 five African American jurors that the People used  
25 peremptories on. Then they used a peremptory on juror

1 number 15, Elyse Barton, who is Caucasian.

2 In total, the People used five, six, seven,  
3 eight, ten peremptory challenges on African Americans  
4 and two peremptory challenges on Caucasians.

5 And for the, for almost all of the African  
6 Americans for whom the People challenged, the one  
7 outlier I think being Andrea Solstad, I don't believe  
8 there are racial neutral reasons that they were  
9 removed. There has clearly been a pattern during this  
10 trial of the People exercising peremptory challenge on  
11 African American jurors to the point now we have a jury  
12 that is majority Caucasian.

13 MR. MOTTOLA: Just I know Your Honor hasn't  
14 decided whether there is a pattern yet. Just note that  
15 is very presumptive of counsel to suggest we have a --  
16 we don't probably know half the races of people seated.

17 Moreover, I want to add in the first panel --  
18 just so we are clear, juror number eight, 15 and 16 who  
19 were seated are African American. That's clear to me.  
20 That is Mr. Wilson, Mr. Bennett, and Miss Brown.

21 So that's three of the first seated jurors.

22 Miss Solstad, I have no idea what she is, to  
23 be honest. And the answer that she gave I think  
24 disqualified her from being a fair juror here.

25 Miss Payne also an African American woman, I

1 believe, seated on this jury. This morning -- where  
2 are we? Seven, right? So juror number seven, also an  
3 African American female woman, I believe.

4 Mr. Nelson is our second alternate.

5 Mr. Flounoy, I think it's an unfair  
6 characterization to say the jury as seated is majority  
7 white or Caucasian and that there was any kind of  
8 pattern on my part. So if the Court finds there is a  
9 pattern I can, I will meet my burden.

10 (Whereupon, there was a pause in the  
11 proceedings.)

12 THE COURT: All right. I've had an  
13 opportunity to review the challenges that have been  
14 exercised. Actually across the board I do not find a  
15 pattern.

16 MS. BURKE: Note our objection for the  
17 record, Your Honor.

18 THE COURT: Certainly.

19 All right. Let's bring in the panel.

20 COURT OFFICER: Ready for the panel, Your  
21 Honor?

22 THE COURT: Yes. Thank you.

23 COURT OFFICER: Panel entering.

24 (Whereupon, the prospective jury entered the  
25 courtroom.)



1 THE CLERK: Okay, folks, please listen up.  
2 If I call your name, you've been selected to serve as a  
3 juror in this case. Please remain seated if I call  
4 your name.

5 Juror number 11, Victoria Jones, juror number  
6 12, Suncica Jasarovic, alternate juror number, William  
7 Flounoy, junior, and alternate juror number two,  
8 Shaquan Nelson. Those people please remain seated.

9 If I did not call your name, you are excused  
10 with the thanks of the Court. Please return to the  
11 central jury room on the second floor. Happy holidays,  
12 merry Christmas to everybody.

13 PROSPECTIVE JUROR: Thank you.

14 (Whereupon, the prospective jury left the  
15 courtroom.)

16 THE CLERK: Thank you.

17 THE COURT: All right. So, ladies and  
18 gentlemen, you've been selected as the last group of  
19 jurors in this case. We are going to, I have another  
20 matter that's going to require my attention for a good  
21 part of the afternoon, so we are going to send you on  
22 your way today. And I will ask you to be back here in  
23 the jury room 9:30 sharp tomorrow morning.

24 Before you leave, the officer's going to take  
25 you to the back and show you the room that you are

1 going to report to each morning that you're here. She  
2 will take a contact number from you in case we need to  
3 reach you, especially if you're late, which I am sure  
4 will not happen. And I can give you a number you can  
5 reach in the event of a problem.

6 Please allow yourself time to get upstairs  
7 'cause it's busy here in the morning, and I want to be  
8 able to start at 9:30. And so, aim for getting here at  
9 9 o'clock. The absolute worse that will happen, you  
10 will sit in the jury room with your fellow jurors and  
11 introduce yourselves to one another.

12 And it's going to be cold tomorrow.  
13 Certainly you may bring tea or coffee, something to  
14 make yourselves more comfortable while you are waiting  
15 and while we are working.

16 Other than that, please don't discuss the  
17 case amongst yourselves or with anyone else in the  
18 interim. You may tell your employer or your family  
19 members that you are a seated juror and you need, when  
20 you need to be here, but beyond that, no discussion at  
21 all about the case, anything having to do with the  
22 case.

23 Please don't go online, do any independent  
24 research about the case or anything connected with any  
25 of the parties to it, including the lawyers, the Court,



1           etcetera.

2                   When you get here tomorrow, we are ready to  
3           go. You will hear some preliminary instructions from  
4           me. We will have openings from the attorneys and then  
5           we will proceed with the People's case.

6                   All right. So I thank you for your service.  
7           If you grab your things, follow the officer, she is  
8           going to show you the room you need to report to.

9                   All right. We will see you bright and early  
10          tomorrow morning.

11                   COURT OFFICER: 9:30, right?

12                   THE COURT: 9:30.

13                   COURT OFFICER: Follow me, guys.

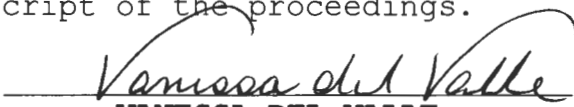
14                   (Whereupon, the jury left the courtroom.)

15                   THE COURT: All right. So as I said, we will  
16          start at 9:30 with the Court's preliminary instructions  
17          and then openings. And have your witnesses lined up  
18          and ready to go. Okay.

19                   Bail is continued. Thank you very much.

20                   \*           \*           \*           \*           \*           \*           \*  
21                   **(Whereupon, the proceedings were adjourned to**  
                  **December 15, 2016.)**

22                   It is hereby certified that the foregoing is a true and  
23                   accurate transcript of the proceedings.

24                     
                  **VANESSA DEL VALLE**  
25                   Senior Court Reporter

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CRIMINAL TERM : PART 33

-----X  
PEOPLE OF THE STATE OF NEW YORK : Indictment No.  
: 6248-2015

- against -

LORENZO MCGRUFF, : Trial  
: (Volume I)  
Defendant. :  
-----X

320 Jay Street  
Brooklyn, New York 11201  
December 15, 2016

B E F O R E:  
HONORABLE MIRIAM CYRULNIK,  
Presiding Judge and a Jury.

A P P E A R A N C E S:

OFFICE OF ERIC GONZALEZ, ESQ.  
Brooklyn District Attorney  
BY: LAWRENCE MOTTOLA, ESQ.  
STEPHANIE D'AGOSTINO, ESQ.  
Assistants District Attorney

FOR THE DEFENDANT:  
BROOKLYN DEFENDER SERVICES  
177 Livingston Street  
Brooklyn, New York  
BY: JAMIE BURKE, ESQ.  
BEN WITTWER, ESQ.

Michele DeNezza, RPR  
Senior Court Reporter

## Proceedings

1 THE COURT CLERK: Calling number seven from  
2 the Part 33 calendar, 6248-2015, Lorenzo McGriff,  
3 case on trial.

4 All parties are present outside of the  
5 presence of the jury panel.

6 MS. BURKE: Jamie Burke, Brooklyn Defender  
7 Services, 177 Livingston Street, Brooklyn, New York  
8 11201 on behalf of Mr. McGriff.

9 Good morning, Your Honor.

10 MR. WITTWER: Ben Wittwer also on behalf of  
11 Mr. McGriff.

12 MR. MOTTOLA: For the office of the  
13 district attorney, Lawrence Mottola.

14 MS. D'AGASTINO: Stephanie D'Agastino for  
15 the office of the district attorney.

16 Good morning, Your Honor.

17 THE COURT: Good morning, Mr. McGriff.  
18 All the jurors are here.

19 Anything before we start?

20 MR. MOTTOLA: I haven't drafted a  
21 stipulation for the video we agreed the other day  
22 would be coming in, the one surveillance video from  
23 75 Livingston. If we can stipulate on the record  
24 that it will be People's, I guess, 1 in evidence.

25 MS. BURKE: That's fine, but we also have

## Proceedings

1 to deal with the medical records.

2 MR. MOTTOLA: Right, so it's -- I had a  
3 chance to review the proposed redactions by counsel.  
4 It's our position that there are a couple of areas  
5 where there are observations made by the medical  
6 personnel and the FDNY personnel specifically stuff  
7 such as where it says patient was very combative,  
8 uncooperative, verbally aggressive. Those are  
9 observations made by the FDNY people and it's not --  
10 that does not come in under the hearsay exception  
11 since it's not for the purpose of medical treatment.  
12 It's just their observation. They would need to be  
13 called to court for that.

14 MS. BURKE: May I respond? It is part of  
15 the medical treatment. It's because of the patient's  
16 behavior that certain medical treatment was given to  
17 the patient. They had to give him Ativan and K-12 to  
18 calm him down in order to suture him and to evaluate  
19 the injuries when he presented himself. So I am  
20 suggesting that those observations must remain  
21 because it was part of his medical treatment.

22 THE COURT: It would seem to be germane to  
23 medical treatment if he is presenting in the  
24 emergency room they would have to evaluate that  
25 behavior to see if there was a head injury, some



Proceedings

1 People have stipulated to, consented to, coming in.  
2 They are certified medical records.

3 MR. MOTTOLA: People's 1.

4 THE COURT SERGEANT: In evidence.

5 MR. MOTTOLA: The surveillance disk from  
6 75 Livingston Street would be People's 2 as  
7 stipulated by defense.

8 THE COURT: Ms. Burke?

9 MS. BURKE: Yes, Your Honor.

10 THE COURT OFFICER: Ready for the panel,  
11 Your Honor?

12 THE COURT: Yes, thank you.

13 THE COURT OFFICER: Jury entering.

14 (Jury enters courtroom.)

15 THE COURT CLERK: Good morning. I know  
16 you just sat down. I have to ask you to stand up and  
17 raise your right hand as a group.

18 (Jury panel sworn.)

19 THE COURT CLERK: Thank you.

20 THE COURT: Good morning, everyone.

21 THE JURORS: Good morning.

22 THE COURT: Thank you so much for being  
23 here promptly. I hope you had at least a chance to  
24 thaw out a little bit in the couple of minutes since  
25 you got here.

## Opening remarks by the Court

1           what I want to do now is take a few  
2 minutes to explain what the procedures are that we  
3 are going to follow for the rest of the trial and  
4 tell you exactly what your responsibilities are going  
5 to be now that you are the jurors in this case.

6           THE COURT CLERK: The jury panel is  
7 present and properly seated.

8           Each side waives the jury roll call?

9           MR. MOTTOLA: So waived.

10          MS. BURKE: So waived.

11          THE COURT: Next step, after I finish  
12 speaking to you, the next step is going to be an  
13 opening statement by the district attorney. The law  
14 requires that the assistant district attorney stand  
15 up before you and tell you what the prosecution  
16 intends to prove by way of the evidence in this case.  
17 After you hear the district attorney's opening  
18 statement, the defense attorney may also make an  
19 opening statement, tell you what the defense believes  
20 the evidence will show.

21          However, the defense is under no  
22 obligation to make an opening statement. It is  
23 entirely optional.

24          After you have heard the opening statement  
25 or statements, the DA will begin presenting the

## Opening remarks by the Court

1 People's case to you. The DA will call witnesses to  
2 the stand and get a chance to question each of the  
3 People's witnesses first. That's called direct  
4 examination. Once the direct examination of each  
5 witness is completed, then defense counsel will have  
6 an opportunity to question the witness and this is  
7 called cross-examination.

8 Once the district attorney is finished  
9 calling People's witnesses and presenting their  
10 evidence, the defendant gets a chance to call  
11 witnesses and present evidence. But I will remind  
12 you, again, he is under no obligation to call anyone  
13 as a witness or to present any evidence. It is  
14 entirely optional for him. The fact that a defendant  
15 does not testify is not a fact from which any  
16 negative inference to the defendant may be drawn.  
17 You cannot hold it against him as I said several  
18 times.

19 After you heard all of the evidence, the  
20 attorneys for each side will get one more chance to  
21 stand up before you to make a closing argument that's  
22 called summation. After you heard the summations, I  
23 will give you the specific principles of law that you  
24 must apply to decide the case. I will give you the  
25 case for your deliberations and then you will go on



## Opening remarks by the Court

1 to render a verdict either guilty or not guilty for  
2 each charge I will list for you on a document we call  
3 the verdict sheet.

4 For the most part, evidence will come from  
5 testimony given by witnesses. There may be physical  
6 exhibits I will allow you to see and hear and if the  
7 attorneys agree on any facts which there is no  
8 dispute, they'll stipulate they agree to those facts  
9 and you may consider them as evidence, too.

10 Please keep in mind that the attorneys'  
11 questions during the trial will not be evidence. It  
12 is the answers that the witnesses give to those  
13 questions that will be the evidence. So, for  
14 example, if an attorney were to ask the witness do  
15 you own a car and the witness says, no, you must not  
16 assume that the witness owns a car simply because the  
17 lawyer asked about one.

18 Now you may hear the attorneys make  
19 objections during the trial. The law allows an  
20 attorney to object to a question asked by the other  
21 side or to an answer given by a witness. You will  
22 see the attorney stand up. They'll say objection.  
23 They may even give a short reason for that objection.  
24 It's my job to rule on those objections. That's what  
25 I will do. If I agree with the lawyer making the

## Opening remarks by the Court

1 objections, I will say sustained. That means I  
2 believe the question or answer is not legally proper  
3 and you have to disregard it. If I disagree with the  
4 attorney who makes the objection, I will say  
5 overruled. That means I believe the question or  
6 answer is legally proper and you may consider it. Of  
7 course, please don't hold it against the lawyers if  
8 they make objections I rule against because they are  
9 simply doing their job.

10 Now let me go over with you your  
11 responsibilities. You have been selected to decide  
12 what happened in this case. You will decide whether  
13 you believe what the witnesses are telling you or you  
14 don't. You will decide what weight to give any of  
15 the evidence and, of course, you will decide the  
16 verdict. We call you the judges of the facts. My  
17 job is to be the judge of the law. The attorneys  
18 have to follow the law as I give it to them whether  
19 they agree with it or not and so must you.

20 Now I don't have any power to tell you  
21 whether to believe a witness or not believe a  
22 witness. Or what weight you should give any of the  
23 evidence or what the verdict should be. When I tell  
24 you something is the law, you have to follow it  
25 whether you agree with it or not.

## Opening remarks by the Court

1           There are certain rules that you have to  
2 follow because you decide the case. The law requires  
3 jurors to follow certain instructions in order to  
4 assure a fair and just trial. You have heard some of  
5 these already. First, do not converse either among  
6 yourselves or with anyone else about anything related  
7 to the case. You may tell the people with whom you  
8 live or your employer that you are a juror or to give  
9 them information about when you need to be in court.  
10 But you may not talk with them or anyone else about  
11 anything related to the case.

12           Second, do not, at any time during the  
13 trial, request, accept, agree to accept or discuss  
14 with any person receiving or accepting any payment or  
15 benefit in return for supplying any information  
16 regarding the trial.

17           Third, you must promptly report directly  
18 to me any incident within your knowledge involving an  
19 attempt by any person to improperly influence you or  
20 any member of the jury. Should you become aware of  
21 such an attempt, do not discuss it with your fellow  
22 jurors, but make it known to the officer you need to  
23 speak to me and they'll bring it to my attention.

24           Fourth, do not visit or view the premises  
25 or place where the charged crime was allegedly

## Opening remarks by the Court

1 committed or any other premises or place that's  
2 involved in the case. And you must not use any  
3 Internet maps or Google Earth or any program or app  
4 or device to search for any location that's discussed  
5 in the testimony.

6 Fifth, do not read, view or listen to any  
7 accounts or discussions of the case reported by  
8 newspapers, television, radio, the Internet or any  
9 news medium.

10 Sixth, do not attempt to research any fact  
11 issue or law related to this case whether it's by  
12 discussing with others, by researching in the library  
13 or Internet or any other means or source. In this  
14 age of instant electronic communication and research,  
15 I want to emphasize in addition to not conversing  
16 with anyone face to face about the case, you must not  
17 communicate with anyone about the case by any other  
18 means including telephone, text message, e-mail,  
19 Internet chat, blogs or any social media sites such  
20 as Facebook or Twitter. You must not provide any  
21 information about the case to anyone by any means  
22 whatsoever, that includes posting information about  
23 the case or what you're doing on the case on any  
24 device or Internet site including blogs, social  
25 chat-rooms, social websites or any other means. You



## Opening remarks by the Court

1 must not Google or search for any information about  
2 case, the law that applies to the case or the people  
3 involved in the case including the defendant, any of  
4 the witnesses, the lawyers or me.

5 Now, I want you to take a few minutes to  
6 discuss and to make sure you understand why these  
7 rules are so important. The law doesn't permit  
8 jurors to converse with anyone else about the case or  
9 permit anyone to talk to you about the case because  
10 only jurors are authorized to render a verdict. Only  
11 you folks have been found to be fair and only you  
12 have promised to be fair. No one else has been  
13 qualified in that way.

14 The law also doesn't permit jurors to  
15 discuss amongst themselves anything about the case  
16 until I tell you to begin your deliberations. Now,  
17 we recognize it's human nature for each of you to be  
18 forming certain tentative opinions about the  
19 witnesses and testimony as the trial goes along and  
20 there is a strong temptation to discuss those  
21 opinions during the course of the trial with the  
22 other jurors or with other people. But the law does  
23 not permit you to do that because the opinions you  
24 may be forming during the course of the trial are  
25 subject to change from time to time as the evidence

## Opening remarks by the Court

1 is presented. And in fairness, you need to hear all  
2 the evidence, the summations of the lawyers and my  
3 final instructions on the law before you share your  
4 thoughts and opinions with the other jurors and reach  
5 a final decision. So the sharing of thoughts and  
6 opinions must take place only at the end of the case  
7 when I say you may again your deliberations. If  
8 prior to those deliberations you engage in premature  
9 discussions, the concern is that you might reach a  
10 premature final decision and that would not be fair.  
11 And only you have promised to be fair.

12 The law also doesn't permit you to visit a  
13 place that's discussed in the testimony. Because  
14 first, you can't always be sure that the location is  
15 in the same condition it was in on the day in  
16 question. Even if it is in the same condition, once  
17 you go to a place discussed in the testimony and  
18 evaluate the evidence in light of what you have seen,  
19 you become a witness, not a juror. And as a witness,  
20 you may now have an erroneous or incorrect view of  
21 the scene that neither side will know about and that  
22 neither side can correct and that, of course, is not  
23 fair.

24 And, finally, the law requires you not  
25 read or listen to any news accounts of the case and



## Opening remarks by the Court

1 you are not to attempt to research any issue or fact  
2 or law related to the case because your decision must  
3 be based solely on the testimony and other evidence  
4 presented in this courtroom.

5 It would not be fair to the parties for  
6 you to base your decision on some reporter's view or  
7 opinion or on information that you acquire outside  
8 the courtroom. The rules are designed to help  
9 guarantee a fair trial and, accordingly, the law sets  
10 forth some serious consequences if the rules are not  
11 followed. So I trust you understand and appreciate  
12 the importance of following the rules and in  
13 accordance with your oath and promise I know you will  
14 do that.

15 Now, a word about note taking. You may  
16 have seen trials on television or movies where they  
17 show the jurors sitting in the jury box and are  
18 basically taking notes while the witness is  
19 testifying. Here in New York, jurors do not take  
20 notes and you are not going to be doing that in this  
21 trial. It's very difficult to listen and hear  
22 everything the witness is saying and observe the  
23 witnesses' demeanor and write it all down accurately.  
24 We will have a court reporter who will accurately  
25 take down everything that's said during the trial.

## Opening remarks by Mr. Mottola

1 If, during the deliberations, at the end of the  
2 trial, you do not remember what a witness said, you  
3 can simply ask to have the testimony read back.

4 One other thing you need to know about  
5 before we start. This is not the only case assigned  
6 to me. I have other matters that I do have to  
7 handle, but I will not ask you to wait around while I  
8 am handling other matters. In return for that,  
9 again, respectfully, I will ask you to make every  
10 effort to be as punctual as you can as will I and the  
11 parties. That completes my instructions to you.

12 We will move on to the next step of the  
13 trial which will be the opening statement by the  
14 assistant district attorney. That will be by  
15 Mr. Mottola.

16 MR. MOTTOLA: On August 11th of 2015,  
17 approximately 1:10 in the afternoon, a woman by the  
18 name Jeanelle Toribio was on her way to 65 Court  
19 Street to get fingerprinted to become a teacher. At  
20 that time she saw two men who she did not know having  
21 a verbal dispute. You will hear from Ms. Toribio.  
22 She'll tell you she didn't think anything of it. She  
23 continued on her business until one of the men, a  
24 stockier African American man wearing a kaki shirt,  
25 the evidence will show that turned out to be the

## Opening remarks by Mr. Mottola

1 defendant, said something along the lines of, if you  
2 don't leave me alone, we are going to go -- made some  
3 kind of statement to the other man who she described  
4 as white or Hispanic in a green shirt.

5 Now, you are going to hear this man in the  
6 green shirt, his name was Mohammed Khalifa and you  
7 know he is not testifying in this case.

8 You will hear he was being antagonistic to  
9 the defendant. When the defendant turned around,  
10 Ms. Toribio will tell you that they were several feet  
11 apart, and that's when the defendant began now  
12 walking towards the other man, Mr. Khalifa. The  
13 evidence in this case will show that at that time the  
14 defendant had several choices before him. You will  
15 hear that there was space between him and Mr.  
16 Khalifa, no one else around. And the evidence will  
17 show that the defendant could have chose flight. But  
18 the evidence will show he did not choose flight;  
19 instead he choose fight.

20 Ms. Toribio standing on Court Street will  
21 tell you the first punch thrown in this case was by  
22 Mr. McGriff. She'll tell you that the force at which  
23 the defendant struck Mr. Khalifa, it was so powerful  
24 it actually knocked Mr. Khalifa backwards into a car  
25 that was on Court Street.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Shortly thereafter, Mr. Khalifa came out



## Opening remarks by Mr. Mottola

1 of that location and Ms. Toribio will tell you again  
2 he was covered in blood. He was holding his head and  
3 he made a statement or screamed something out and  
4 started following the direction that the defendant  
5 took up towards Atlantic Avenue towards Schermerhorn  
6 Street.

7 That's the last Ms. Toribio saw either of  
8 these two men. She doesn't know these two men.  
9 That's not where the case ends because other  
10 bystanders on Court Street someone called 911.  
11 Police officer Caleb Louard from 84th Precinct, he is  
12 the first -- what is known as the responding officer.  
13 He responded in a marked car in his uniform with his  
14 partner to Court Street between Livingston and  
15 Joralemon.

16 By the time he got to that location you  
17 will hear from Officer Louard either the defendant or  
18 Mr. Khalifa were on scene. They had already fled.  
19 Defendant doesn't wait on scene. Mr. Khalifa  
20 followed him. Officer Louard began canvassing the  
21 area. He canvassed -- he was directed by other  
22 pedestrians towards Schermerhorn more towards Clinton  
23 across Atlantic Avenue, down to Dean Street  
24 ultimately to Bergen approximately eight or nine  
25 blocks all told.

## Opening remarks by Mr. Mottola

1           Officer Louard will tell you he first  
2           observed the victim Mr. Khalifa in the green shirt  
3           bleeding from his head, from his torso in a green  
4           shirt and that Mr. Khalifa was laboring physically  
5           around the vicinity of Dean Street. As a police  
6           officer, he stopped Mr. Khalifa. He told him stay on  
7           scene, wait for the ambulance. You will hear Mr.  
8           Khalifa cooperated and ultimately he laid down and  
9           waited for the ambulance. Other officers responded.  
10          They stayed with the victim. And Officer Louard  
11          continued his job, his duty, to try to find the  
12          defendant.

13                 Now, he will tell you on the next block,  
14          Bergen, he did find the defendant and he found a man  
15          fitting the exact description, a larger, stockier  
16          African American, black bucket hat, kaki shirt red  
17          shoes, blue jeans. The circumstances, he found and  
18          arrested the defendant, were actually captured on  
19          video. You will see that video since on that block  
20          there are two schools. Officer Louard will tell you  
21          he had his gun out. He was responding to a call of  
22          an assault with a knife. He had his firearm out as  
23          he is trained to do. When he circled around a parked  
24          vehicle, he found this defendant crouched down laying  
25          almost prone trying to avoid being apprehended. At



## Opening remarks by Mr. Mottola

1 that point, Officer Louard and Officer Isaacs  
2 proceeded to detain the defendant. You will see the  
3 video. You will see the defendant attempted to get  
4 up. Officers had a minor struggle putting him in  
5 cuffs. Ultimately, there was no scuffle and he was  
6 arrested.

7 what you will hear is he was searched and  
8 the knife was never recovered. The knife Ms. Toribio  
9 saw him put in his pocket was not on him by the time  
10 he was arrested.

11 Now, you are going to hear the 911 call.  
12 You are going to hear from witnesses. You are going  
13 to hear from the police officers. You know you are  
14 not going to hear from Mr. Khalifa and you all say  
15 you could be fair and judge the evidence as it's  
16 presented. You will hear about his physical  
17 conditions and decide the eyewitness testimony  
18 through the medical records.

19 If you keep an open mind, you follow the  
20 oath that you promised, I am convinced that when you  
21 hear from me next week in summation, I stand before  
22 you again and I argue the evidence, you will find the  
23 defendant not only guilty of assault in the second  
24 degree, but of other charges as well for attempting  
25 to cause and successfully causing injuries to Mr.

## Opening remarks by Mr. Wittwer

1 khalifa with that knife.

2 Thank you.

3 THE COURT: You will now hear from  
4 Mr. Wittwer.

5 MR. WITTWER: There is nothing scarier  
6 than someone who isn't afraid of anything. Someone  
7 who can't be reasoned with. Someone who won't be  
8 deterred, someone who has nothing to lose. It's not  
9 an uncommon experience here in the city to have an  
10 uncomfortable encounter with a stranger out in the  
11 street, someone looks at you funny, says something  
12 that makes you uncomfortable. Most of us in that  
13 situation we walk a little faster and keep looking  
14 and eventually realize you are safe then you have  
15 that feeling of relief.

16 what about when that feeling never comes  
17 what about, when that stranger never stops. That's  
18 the nightmare that Lorenzo McGriff lived on August  
19 11, 2015.

20 You know you might look at Mr. McGriff and  
21 say he is a big guy, looks like he can take care of  
22 himself, some of you might be intimidated by him at  
23 first glance. Mohammed Khalifa was not intimidated.  
24 The evidence in this trial will show Mohammed Khalifa  
25 was determined to have a violent physical encounter

## Opening remarks by Mr. Wittwer

1 with Mr. McGriff that day and that he would stop at  
2 nothing to do that and that he put Mr. McGriff in a  
3 situation where he had no option but to defend  
4 himself.

5 You heard the prosecutor refer to Mr.  
6 Khalifa as a victim a couple of times. But the  
7 evidence will show that it was Mohammed Khalifa who  
8 started this confrontation that day, not Mr. McGriff.  
9 It was Mohammed Khalifa who followed Mr. McGriff for  
10 block after block screaming racial slurs and violent  
11 threats; not Mr. McGriff.

12 It was Mohammed Khalifa who had cocaine in  
13 his system that weekday afternoon; not Mr. McGriff.  
14 And it was Mohammed Khalifa, ladies and gentlemen,  
15 who first brandished a weapon and tried to use it;  
16 not Lorenzo McGriff.

17 They didn't mention the weapon.

18 It was about one o'clock in the afternoon  
19 and Mr. McGriff was on his lunch break from his job  
20 as peer counsel for persons with mental illness in  
21 downtown Brooklyn. He was walking along Court and  
22 turned on Joralemon heading in the direction of  
23 Boerum Place. That's where he first encountered  
24 Khalifa. Complete strangers. He was walking one way  
25 and Mr. Khalifa was walking the opposite way on the

## Opening remarks by Mr. Wittwer

1 sidewalk as they passed, Mr. Khalifa elbowed him.  
2 Mr. McGriff turned around. In that kind of situation  
3 it can escalate or de-escalate depending how parties  
4 choose to behave. To borrow a phrase from Mr.  
5 Mottola you got flight or fight. The defendant, Mr.  
6 McGriff, chose flight. He continued to walk down  
7 Joralemon towards Boerum away from this individual.  
8 But Mr. Khalifa wasn't done and Mr. McGriff knew he  
9 wasn't done because as he was walking towards Boerum  
10 Place, he began to hear Mr. Khalifa screaming and the  
11 things he was screaming are despicable and not easy  
12 to hear. But you need to hear them because they are  
13 what happened. Hey, Nigger, get back here you slave,  
14 I will kill your ass, I will send you back to Africa.

15 Those are the words that Mr. McGriff is  
16 hearing Mr. Khalifa scream at him in broad daylight  
17 during lunch rush hour in downtown Brooklyn. Again,  
18 though, Mr. McGriff shows flight.

19 The evidence will show that he changed his  
20 route. He crossed Joralemon Street towards the  
21 Borough Hall side of the street and then walked down  
22 Joralemon down to Court to get away from this man,  
23 but Mr. Khalifa followed him step by step screaming  
24 these hideous things, screaming these threats,  
25 following him all the way back down the other end of



## Opening remarks by Mr. Wittwer

1 Joralemon Street.

2 Mr. McGriff, he got to Court, he crossed  
3 Court Street to the other side, made a left on Court  
4 Street heading south on Court Street, heading towards  
5 Livingston. Mohammed Khalifa says, get back here  
6 nigger. Then Mr. McGriff saw an opportunity. There  
7 was a steady stream of traffic coming up Court  
8 Street. Mr. McGriff actually walked into the middle  
9 off traffic. You will see it this on video. He  
10 walked into the middle to weave between cars to get  
11 to the other side of the street thinking maybe I can  
12 lose this guy. You will see Mohammed Khalifa walked  
13 and weaved between the same traffic with  
14 Mr. McGriff's back turned. That's when the situation  
15 escalated to violence. There was construction going  
16 on on this particular block of Court Street. You  
17 will see there was some trucks there, some  
18 maintenance equipment, some rubble. Mohammed Khalifa  
19 bends down and picked up a hunk of concrete, a  
20 brick-like object. For whatever reason he is  
21 carrying a shirt, he is wearing a shirt, but carrying  
22 some other shirt or sweater or something like that.  
23 He placed the brick into the garment and he begins to  
24 swing it like a sling.

25 Mr. McGriff turned around at that point

## Opening remarks by Mr. Wittwer

1 and he saw this violent stranger created his own  
2 weapon and I would suggest to you flight was no  
3 longer an option. He had to defend himself, protect  
4 himself.

5 The evidence will show that's what he did.  
6 And that after he subdued the individual momentarily  
7 he continued to flee him and he had good reason to.

8 Ladies and gentlemen, Mr. Mottola told you  
9 both of these individuals ended up six blocks from  
10 where this happened. After Mr. McGriff defends  
11 himself, he begins to go down Court and Mohammed  
12 Khalifa is following him still; still screaming  
13 threats, still screaming remarks that suggest racial  
14 hatred while he is bleeding.

15 Eventually, the police come and they  
16 apprehend both of these individuals. I will suggest  
17 to you, ladies and gentlemen, Mr. McGriff was  
18 cooperative. He got down on the ground. When police  
19 had their guns drawn, he cooperated with their  
20 commands, allowed himself to be arrested. Meanwhile  
21 Mohammed Khalifa assaulted the medical personnel on  
22 scene to treat him the evidence will show. They had  
23 to sedate him because he was being physically and  
24 verbally aggressive with EMTs. When they end up  
25 taking him to the hospital, he is physically and



## Opening remarks by Mr. Wittwer

1 verbally aggressive with the people there rendering  
2 aid.

3 They end up testing -- his urine tests  
4 positive for cocaine. The next day, he is not in the  
5 hospital 24 hours, he signs himself out against  
6 doctors' orders, threatens the staff. They don't let  
7 him and he leaves and is escorted off the premises by  
8 security.

9 Now, you heard a lot about Mohammed  
10 Khalifa and you probably have a lot of questions  
11 about him. I don't know how many of those questions  
12 are going to be answered at this trial because he is  
13 not testifying. I want to make it clear to you,  
14 ladies and gentlemen, it has nothing to do with  
15 injuries.

16 MR. MOTTOLA: Objection.

17 THE COURT: Sustained.

18 MR. WITNER: You are not going to know  
19 the reason Mr. Khalifa is not testifying. It's an  
20 important question. It's a question you ought to  
21 think about because the Government can't meet it's  
22 burden of proof beyond a reasonable doubt without  
23 calling the alleged victim in this case. And the way  
24 they are going to try to do that is they are going to  
25 show you pieces of what happened. They are going to

## Opening remarks by Mr. Wittwer

1 have witnesses to some of what happened.

2 They are going to show video of some of  
3 what happened. They are going to call Jeanelle  
4 Toribio. She is going to be a much more pleasant  
5 witness to listen to than Mohammed Khalifa. But she  
6 doesn't know what happened. The only witness you are  
7 going to hear from what happened and will tell you  
8 accurately is Lorenzo McGriff.

9 He will recount images and sounds and  
10 feelings that are ingrained to his memory the rest of  
11 his life. What I am just asking you, ladies and  
12 gentlemen to do now is what you all swore you would  
13 do is keep an open mind. Remember Mr. McGriff is  
14 presumed to be innocent.

15 Remember the burden of proof is on the  
16 prosecution to show that their story is what happened  
17 beyond any doubt, to show that Mr. McGriff's actions  
18 that day were not justified by law beyond any doubt.

19 And at the end of this trial Ms. Burke and  
20 I will ask you to do simple justice for Mr. McGriff.

21 Thank you.

22 (Continued in volume two, page one.)

23

24

25

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CRIMINAL TERM : PART 33

PEOPLE OF THE STATE OF NEW YORK : Indictment No.  
: 6248-2015

- against -

LORENZO MCGRUFF, : Trial  
: (Volume II)

Defendant.

320 Jay Street  
Brooklyn, New York 11201  
December 15, 2016

B E F O R E:  
HONORABLE MIRIAM CYRULNIK,  
Presiding Judge and a Jury.

A P P E A R A N C E S:

OFFICE OF ERIC GONZALEZ, ESQ.  
Brooklyn District Attorney  
BY: Lawrence Mottola, Esq.  
Stephanie D'Agostino, Esq.  
Assistants District Attorney

FOR THE DEFENDANT:  
Brooklyn Defender Services  
177 Livingston Street  
Brooklyn, New York  
BY: Jamie Burke, Esq.  
Ben Wittwer, Esq.

Michele DeNezza, RPR  
Senior Court Reporter



J. Toribio - People - direct

1 MR. MOTTOLA: People call Jeanelle  
2 Toribio.

3 THE COURT OFFICER: Ready for the witness?

4 THE COURT: Yes.

5 THE COURT OFFICER: Witness entering.  
6 (Witness enters courtroom.)

7 THE COURT OFFICER: Remain standing face  
8 the clerk.

9 J E A N E L L E T O R I B I O , a witness called by and  
10 on behalf of the People, having first been duly sworn,  
11 testifies as follows:

12 THE COURT CLERK: Please state your name  
13 for the record and spell your name.

14 THE WITNESS: My name is Jeanelle Toribio,  
15 J-e-a-n-e-l-l-e, T-o-r-i-b-i-o .

16 THE COURT: Spell your first name again.

17 THE WITNESS: J-e-a-n-e-l-l-e.

18 THE COURT: Approach for just a moment.

19 (Whereupon, there is a discussion held off  
20 the record at the bench between the assistants  
21 district attorney, defense counsels and the Court.)

22 THE COURT: Ms. Toribio, can I have that  
23 paper, please?

24 THE WITNESS: (Handing.)

25 THE COURT: Mr. Mottola, whenever you are

J. Toribio - People - direct

1 ready.

2 DIRECT EXAMINATION BY

3 MR. MOTTOLA:

4 Q Good morning, Ms. Toribio.

5 A Good morning.

6 Q How old are you?

7 A 36.

8 Q Are you currently employed?

9 A Yes, I am.

10 Q Where do you work?

11 A Department of Education.

12 Q How long have you worked there?

13 A I have worked there two years now.

14 Q I want to direct your attention to August 11th  
15 of 2015. Approximately one o'clock in the afternoon.

16 Where were you at that time?

17 A I was going to 65 Court Street to get  
18 fingerprints for my job and I was walking towards 65 Court  
19 Street.

20 Q Is that here in Brooklyn?

21 A Downtown Brooklyn, yes.

22 Q What was the weather like that day if you  
23 remember?

24 A It was sunny, warm.

25 Q Were you with anyone else?

## J. Toribio - People - direct

1 A No, I was by myself.

2 Q Which direction were you coming from?

3 A I was coming from -- I don't really know. I  
4 was coming from Livingston walking towards Court Street. I  
5 don't know.

6 Q So as you were walking towards 65 Court Street,  
7 what, if anything, happened at that time?

8 A As I was walking to the building, I was  
9 crossing the street and then I noticed that there was  
10 construction on the street. So there was a lot of things  
11 on the street. So I started to cross and then I noticed  
12 there were two men in the street arguing. And so I noticed  
13 them because they were -- they were -- they looked like  
14 they were arguing, about to fight.

15 Q Did you know either of these two men?

16 A No.

17 Q And could you describe the two men to the best  
18 of your ability to the jury?

19 A One man was tall, he looked black. Should I  
20 say what he was wearing?

21 Q If you remember.

22 A Black hat, he was wearing a black hat, blue  
23 jeans, possibly tan polo shirt that was maybe light brown.

24 The other man was skinny, long black hair with a  
25 green shirt.



J. Toribio - People - direct

1 Q Okay.

2 When you first observed these two men, how close  
3 were you to them?

4 A I was maybe a couple of feet away from them.  
5 Very, very -- not in close proximity, but maybe like four  
6 feet or something like that.

7 Q Well, were you in the street?

8 A I was still -- I didn't cross yet.

9 Q So you were on one of the sidewalks?

10 A Yeah, I was still on the same side that I was  
11 going to cross then, that's when I noticed them and I had  
12 stopped.

13 Q Were you on the same side of Court Street as  
14 65?

15 A No, I was across the street from it.

16 Q Let me finish the question, for the reporter.  
17 You were opposite from 65; is that fair?

18 A Yes.

19 Q And where were the two men?

20 A In the middle of the street.

21 Q Could you tell how close they were to each  
22 other when you heard the arguing?

23 A They were very close to each other.

24 Q And what were these men doing?

25 A Well, the man with the green shirt seemed like

J. Toribio - People - direct

1 he kept on approaching him and the other man was trying to  
2 get away from him saying, get away from me.

3 Q So you could actually hear what was being said?

4 A I did hear him say, you know, get away from me.

5 Q That's the larger man?

6 A The larger man.

7 Q What happened after you heard that man say get  
8 away from me?

9 A So, it was like they, the other man would not  
10 get away from him. He was very close to him. So he was  
11 just like, well, okay, you don't -- you are going to keep  
12 on saying what you are saying or you are going to keep on?  
13 Okay. And then he got mad.

14 Q So we are clear. Again, this was the larger  
15 man saying these things?

16 A Yeah.

17 Q Or the other man?

18 A The larger man.

19 Q So it's something along the lines of, you are  
20 going to keep saying these things?

21 MR. WITTWER: Objection.

22 THE COURT: Sustained.

23 Q Was the larger man at that point facing the man  
24 in the green?

25 MR. Wittwer: Objection.

J. Toribio - People - direct

1 A I can't remember.

2 THE COURT: Ma'am, when you hear  
3 objection, that means you have to wait for me to tell  
4 you whether you can or can't answer.

5 Don't lead.

6 Q Which direction was the larger man looking when  
7 he made that statement if you remember?

8 A I don't remember.

9 Q So what happened after that?

10 A Then after that, then he hit the other man.

11 Q So, we need to be very specific.

12 A The larger man hit the man with the green  
13 shirt.

14 Q Do you recall how he hit him?

15 A No, no.

16 Q Did he kick him, punch him?

17 A Oh, he punched him. Yes, he punched him.

18 Q How close were the men at this point?

19 A Very close. On top of each other.

20 Q Before the man in the green was punched had you  
21 seen him take any kind of physical action towards the  
22 larger man?

23 A No.

24 Q What was the man in the green doing before he  
25 got punched, if you remember?

J. Toribio - People - direct

1           A       He just kept on going towards him, just kept  
2 on, you know, he wouldn't give him any sort of space. He  
3 just kept on going towards him.

4           Q       Did you see him with any kind of weapon or  
5 object?

6           A       No.

7           Q       Did you see him doing anything?

8                   MR. WITTWER: Objection.

9                   THE COURT: Overruled.

10          Q       Did you see him doing anything at all with his  
11 hands that you can remember?

12                   MR. WITTWER: Objection.

13                   THE COURT: Overruled.

14          A       I don't remember.

15          Q       So after the larger man, he punches the man in  
16 the green, what happened after that?

17          A       So, they were -- so he was -- he couldn't hit  
18 him back, the other man was just overpowering him. So I  
19 think he was just like you said, was he doing anything with  
20 his hands, he was holding onto him to him like as he was  
21 hitting him then they fell into the car, a car that was  
22 right next to that, they were right next to, then the  
23 mirror broke off, fell off.

24          Q       I want to back up.

25                   When the man in the green was punched the first



J. Toribio - People - direct

1 time, are the two men still in the street?

2 MR. WITTWER: Objection.

3 THE COURT: Overruled. Try not to lead.

4 But he has to clarify. We have a lot of "hes".

5 A Yes, they were still in the street.

6 Q Now you said he was holding on to the --

7 A The man with the green shirt.

8 Q So if you can clarify who was doing what for  
9 the jury.

10 A Yes, the man with the green shirt was holding  
11 on to the man with the black hat.

12 Q While the man in the green shirt is holding on,  
13 what, if anything, was the other man doing?

14 A I don't remember. I remember there was the one  
15 hit and then I don't remember after that.

16 Q You just testified that they ended up going  
17 somewhere.

18 In which direction did these two men go during  
19 the fight?

20 A When they fell into the car, they ended up on  
21 the other side of the street, which is the 65 Court Street,  
22 and then fell into a building that was under construction  
23 or a storefront that was under construction.

24 MR. MOTTOLA: I would ask there are four  
25 eight and a half by 11 color photos I would like to



J. Toribio - People - voir dire by Mr. Wittwer

1 show the witness and mark them 3, 4, 5 and 6 for  
2 identification.

3 THE COURT: All right.

4 THE COURT OFFICER: Okay. They are  
5 marked.

6 Q Ms. Toribio, look at those four photos. Do you  
7 recognize the location in each of those four photos?

8 A Yes.

9 Q And which block is pictured in those four  
10 photos?

11 A 65 Court Street.

12 Q Are those photos fair and accurate  
13 representations what the street looked like on August 11 of  
14 2015?

15 A Yes.

16 MR. MOTTOLA: Your Honor, I would ask that  
17 People's 3, 4, 5 and 6 for identification be entered  
18 and received as 3, 4, 5 and 6 in evidence.

19 MS. BURKE: One moment, Your Honor.

20 MR. WITTWER: I would ask for a brief  
21 opportunity to voir dire the witness on the  
22 photographs.

23 THE COURT: Okay.

24 VOIR DIRE EXAMINATION BY

25 MR. WITTWER:

J. Toribio - People - voir dire by Mr. Wittwer

1 Q Good morning, Ms. Toribio.

2 A Good morning.

3 Q The photographs in front of you you testified a  
4 moment ago they are a fair and accurate depiction what it  
5 looked like in the area of 65 Court Street?

6 A Yes.

7 Q But the set up of the street in those  
8 photographs is not the same as it was on August 11, 2015,  
9 is it?

10 A Why would it be different?

11 Q Wasn't there a significant amount of  
12 construction going on in the street on the 11th you  
13 testified about?

14 A Yes, there was.

15 Q Is there construction going on in any of those  
16 photographs?

17 A No, I don't see it, no.

18 Q And the construction that was going on back on  
19 August 11th of last year, obstructed the view in portions  
20 of the street, correct?

21 A I don't think that it --

22 THE COURT: I am going to sustain that.

23 Q The street itself was obstructed by  
24 construction equipment on August 11th, correct?

25 MR. MOTTOLA: Objection.

J. Toribio - People - direct

1 THE COURT: Sustained.

2 MR. WITTWER: Nothing further. Thank you,  
3 Your Honor.

4 THE COURT: Any objection?

5 MR. WITTWER: No objection.

6 THE COURT: Thank you. We will mark it 3  
7 through 6 inclusive in evidence.

8 THE COURT OFFICER: So marked.

9 DIRECT EXAMINATION BY

10 MR. MOTTOLA:

11 Q So, Ms. Toribio, I am going to ask you to look  
12 at the photos. Can you show us on the photos --

13 THE COURT: Do you want to use the  
14 overhead projector?

15 MR. MOTTOLA: Yes, please.

16 Q In the meantime, so, you testified that the men  
17 ended up crossing Court Street, correct?

18 A Yes.

19 Q Where did they go?

20 A They fell into the store that was under  
21 construction, that was empty.

22 Q So, if you can look through those photos  
23 People's 3 through 6, do you see the area they were, they  
24 crossed into, in any of those photos?

25 A I do, I do.

J. Toribio - People - direct

1 Q If you can turn the photo around and let us  
2 know which photo it is?

3 THE COURT: People's 4.

4 Q If I can have People's 4.

5 So, Ms. Toribio, looking at this photo --

6 THE COURT: Is that People's 4?

7 Q -- People's 4 in evidence, looking at People's  
8 4 in evidence, does this view, are we facing 65 Court  
9 Street or is it behind us?

10 A We are facing it.

11 Q Can you indicate where 65 Court Street would  
12 be?

13 A (Indicating.)

14 Q To the upper right corner of the photo, this  
15 gray and black building?

16 A Yes.

17 Q Can you indicate if possible on the photo where  
18 you saw the two men fighting before they crossed the  
19 street?

20 A Before (indicating.)

21 Q Indicating to the left next to the first  
22 vehicle between the writing on the pavement.

23 After the two men crossed, the street into the  
24 storefront, can you indicate where they went?

25 A They went into here.

J. Toribio - People - direct

1 Q So that's the third, the third storefront from  
2 the left of 65 Court?

3 A Yes.

4 Q Once they went inside that location, how long  
5 were they there?

6 A Maybe a minute, not very long.

7 Q And where were you at this time?

8 A I was still outside, still in the street.

9 Q You were still in the street.

10 How close would you say you were to that  
11 location that we have just shown in People's 4?

12 A I mean I was across the street.

13 Q Was anything blocking your view?

14 A No.

15 Q You said approximately a minute these men were  
16 inside?

17 A Uh-huh, yes.

18 Q What happened after that minute passed?

19 A They fell into the store and they, from that  
20 fight that they had had, and then they were in there. I  
21 didn't see what was happening when they were in there and  
22 then when they came outside, then, well, the first one, the  
23 first man with the black hat came outside. He came outside  
24 then he had a knife. And he put it in his pocket then he  
25 started to run and then the other man with the green shirt



J. Toribio - People - direct

1 came out. He had blood on his head and he was holding his  
2 head and he was screaming, I am still alive, and then he  
3 ran after him in the same direction.

4 Q So, you're still across from 65 Court Street  
5 when you saw the men come out of the building?

6 A Yes.

7 MR. WITTWER: Objection. Continued  
8 leading.

9 THE COURT: Sustained.

10 Q Had you seen the knife prior to the time the  
11 man came out of the building?

12 A No.

13 Q That was the first time you seen the knife?

14 A Yes.

15 Q Did you see any injuries to this larger man?

16 A No.

17 Q Did you notice any blood on him?

18 A No.

19 Q You testified that they were fighting, and  
20 that's how they ended up in this building?

21 A Yes.

22 Q Can you describe the fight for us? What did  
23 you see?

24 A What I saw was when he -- when the man with the  
25 black hat hit him, basically the other man was -- with the

J. Toribio - People - direct

1 green shirt was just holding on to him, you know, I guess  
2 not to fall, but just still be there and then -- then  
3 that's when they fell on to the car and then they broke the  
4 mirror and then some other momentum got into the store they  
5 fell into the store. I don't remember exactly what they  
6 were doing or how they were fighting.

7 Q So during this whole time, did you see the man  
8 in the green shirt with any weapon?

9 A No.

10 MR. WITTWER: Objection.

11 THE COURT: Overruled.

12 Q Did you see him with any object?

13 A No.

14 Q Did you see him with anything at all in his  
15 hands?

16 A No.

17 Q Did you see him strike the larger man at all?

18 MR. WITTWER: Objection.

19 THE COURT: Overruled.

20 A No.

21 Q What direction did the larger man, in which  
22 direction did the larger man go when he left from that  
23 storefront, do you remember?

24 A North, maybe north. So it was passed 65 Court  
25 Street.

J. Toribio - People - cross/Mr. Wittwer

1 Q And was he walking?

2 A Running.

3 Q He was running.

4 What did the man in the green shirt do?

5 A He ran after him.

6 Q Is that the last time that you had seen either  
7 of those two men that day?

8 A Yes.

9 Q So after the two men left Court Street what did  
10 you do?

11 A I went into the building I was going into, 65  
12 Court Street.

13 MR. MOTTOLA: Thank you, Ms. Toribio. I  
14 have no further questions.

15 CROSS-EXAMINATION BY

16 MR. WITTWER:

17 Q Good morning, again, Ms. Toribio, prior to  
18 August 11, 2015, you had never seen Mr. Lorenzo McGriff?

19 A No.

20 Q You had never seen Mohammed Khalifa either?

21 A No.

22 THE COURT: Keep your voice up a lit bit.

23 Q You don't know either of these two men?

24 A No.

25 Q The first time you had ever seen either of

J. Toribio - People - cross/Mr. Wittwer

1 these two men was when you were walking on to Court Street?

2 A Yes.

3 Q You didn't know their names at the time?

4 A No.

5 Q There was a man in the Polo shirt?

6 A Yes.

7 Q And you now know that's Mr. McGriff?

8 A Yes.

9 Q And there was the man in the green shirt?

10 A Yes.

11 Q And you know his name was Mohammed Khalifa?

12 A Yes.

13 Q You don't know what went on between Mr. McGriff  
14 and Mr. Khalifa before you got to Court Street?

15 A No.

16 Q You didn't see Mr. Khalifa elbow Mr. McGriff on  
17 Joralemon Street?

18 A No.

19 Q You didn't see Mr. Khalifa follow Mr. McGriff  
20 down Joralemon Street?

21 A No.

22 Q You didn't see Mr. Khalifa follow Mr. McGriff  
23 down Court Street?

24 A He was following him.

25 Q By the time you saw Mr. Khalifa and Mr. McGriff

J. Toribio - People - cross/Mr. Wittwer

1 they were midway down Court Street?

2 A No.

3 Q So you can only testify what you saw that day?

4 A Yes.

5 Q In fact, it was clear to you from what you did  
6 see that this was an incident that began sometime before  
7 you got there?

8 MR. MOTTOLA: Objection.

9 THE COURT: Sustained.

10 A I didn't know.

11 THE COURT: There is going to be no sound  
12 effects from anybody in the courtroom period. Please  
13 continue.

14 MR. WITTWER: One moment Your Honor. May  
15 I approach?

16 THE COURT: Sure.

17 (Whereupon, there is a discussion held off  
18 the record at the bench between the assistants  
19 district attorney, defense counsels and the Court.)

20 Q Ms. Toribio, at the time you saw this argument  
21 you were able to ascertain that it was a continuation of  
22 something that started previously, correct?

23 A No, I didn't know, I didn't know what was  
24 happening.

25 Q Ms. Toribio, did you testify about this



J. Toribio - People - cross/Mr. Wittwer

1 proceeding at a previous date?

2 A Yes.

3 Q And it was last year, correct?

4 A Yes.

5 Q It was shortly after everything that you saw  
6 and you are describing today?

7 A Yes.

8 Q So the events of what happened on August 11th  
9 were fresh in your memory at the time you previously  
10 testified?

11 A Yes.

12 Q And you were being you were under oath at the  
13 time you previously testified?

14 A Yes.

15 Q And you were being as accurate as possible at  
16 the time you testified?

17 A Yes.

18 Q Isn't it true that you were asked on that prior  
19 date: And the man in green was antagonizing the other guy.  
20 could you tell what they are saying?

21 And you responded: Some sort of arguing that  
22 that happened before I saw them.

23 Isn't that what you testified to?

24 A Some sort of arguing that happened before I saw  
25 them.

J. Toribio - People - cross/Mr. Wittwer

1 Q Isn't that what you testified to previously?

2 A I would not know if they were arguing before I  
3 saw them. I don't know what was happening.

4 Q But you knew when you testified about this  
5 proceeding last year, didn't you?

6 A I don't know if my words were not -- are being  
7 misconstrued, but I -- the only thing I know is what I saw  
8 and only thing I heard is what I heard. When I saw them, I  
9 don't know what was happening before I saw them.

10 Q Is there anything that would refresh your  
11 recollection about what you testified to previously?

12 A Like what?

13 Q Like if you were able to read a transcript of  
14 your testimony from a prior hearing, would that help you  
15 remember today what you said back then?

16 A Sure.

17 MR. WITTWER: May I approach the witness?  
18 (Handing to the court officer.)

19 THE COURT: Counsel, can you direct her to  
20 a line number you are inquiring about?

21 MR. WITTWER: Should I approach?

22 THE COURT: Do it from where you are.

23 Q I am referring to lines 21 through 24 on page  
24 18.

25 A I see it.

J. Toribio - People - cross/Mr. Wittwer

1 Q So, these are actually the notes that you were  
2 referring to immediately before your testimony today,  
3 correct?

4 A Uh-huh.

5 Q You had them up on the witness stand with you  
6 before you began testifying?

7 MR. MOTTOLA: Objection.

8 THE COURT: Sustained.

9 Q It's true you testified last year there was  
10 some sort of arguing that happened before you saw them,  
11 correct?

12 A That is true, according to this, yes.

13 Q Thank you. Let's talk about what you did that  
14 day.

15 You were on Court Street between Joralemon and  
16 Livingston, correct?

17 A Yes.

18 Q They were doing construction on the street at  
19 the time?

20 A Yes.

21 Q And you were in the process of crossing the  
22 street?

23 A Yes.

24 Q And it was initially out of the corner of your  
25 right eye that you saw these two men on the street?

J. Toribio - People - cross/Mr. Wittwer

1 A Yes.

2 Q And you could hear that Mr. McGriff was telling  
3 the other man, get away from me?

4 A Yes.

5 Q But the other man, Mr. Khalifa, kept going back  
6 to Mr. McGriff?

7 A Yes.

8 Q And this happened a couple of times that you  
9 saw?

10 A Yes.

11 Q And this was before you saw any physical action  
12 by either man?

13 A Yes.

14 Q Mr. Khalifa kept coming very close to Mr.  
15 McGriff?

16 A Yes.

17 Q And you don't know what the source of the  
18 argument was?

19 A No.

20 Q You couldn't hear most of what was being said?

21 A No.

22 Q You heard Mr. Khalifa yelling at Mr. McGriff?

23 A I heard them arguing.

24 Q Did you hear Mr. Khalifa call Mr. McGriff a  
25 nigger?



## J. Toribio - People - cross/Mr. Wittwer

1 A No.

2 Q You heard Mr. McGriff say oh, you going to say  
3 it again?

4 A Yes, I did hear that.

5 Q You did not hear what Mr. Khalifa said that  
6 triggered that reaction?

7 A No.

8 Q Mr. Khalifa was holding something while this  
9 was going on, wasn't he?

10 A I don't remember that.

11 Q You testified that you were about four feet  
12 away from these men as this was going on, correct?

13 A Approximately.

14 Q So, I don't have a ruler in the courtroom, so  
15 just let me know. I have no idea if this was four feet.  
16 Is this how close you were when you were watching this?

17 A No. Maybe, yeah, maybe there.

18 Q So from about where you are sitting in the  
19 witness stand to where I am standing is how far away you  
20 were from the altercation that you witnessed?

21 THE COURT: For the record, would you say  
22 you are at the front edge of the court reporter's  
23 area? Seven feet, four inches.

24 Q Seven feet four inches away, that's how far  
25 away you were from these two men?



J. Toribio - People - cross/Mr. Wittwer

1 A Approximately.

2 Q From this distance, you have no recollection of  
3 Mohammed Khalifa holding anything in either of his hands?

4 A I didn't see him have anything in his hands.

5 Q You mentioned earlier that Mr. Khalifa was  
6 antagonizing Mr. McGriff?

7 A Yes.

8 Q He would get close to Mr. McGriff and  
9 Mr. McGriff would try to get him away?

10 A Yes.

11 Q And Mr. McGriff would try to get him away, that  
12 didn't involve punching him or doing anything else?

13 A No.

14 Q And actually Mr. McGriff was making a motion at  
15 the man that sort of, to you, meant get away?

16 A Yes.

17 Q Could you demonstrate the motion for the jury?

18 A It was kind of like to scare him away, you  
19 know, like get away from me, get away from me. Like that.

20 Q But it didn't work?

21 A No.

22 THE COURT: Make a record of what you  
23 observed.

24 MR. WITTWER: Let the record reflect that  
25 the witness is using both of her arms and sort of

J. Toribio - People - cross/Mr. Wittwer

1 thrusting them forward in a repeated motion to  
2 describe what Mr. Khalifa was doing on that day. Your  
3 Honor, I would like to refer to the exhibit  
4 Mr. Mottola published. People's 4. I need some help  
5 with the technological aspect?

6 THE COURT: Should be on. See your hand  
7 is there.

8 MR. WITTWER: Dim the lights, please.  
9 August 11th this is not exactly what the street  
10 looked like?

11 A No, there was construction.

12 Q And the construction was on the right-hand side  
13 of the street, correct?

14 A It was in the middle. Yes, yes.

15 THE COURT: Can you use the pointer?

16 Q If I can, to depict where the construction was  
17 occurring?

18 A Alongside here, no alongside here I think.

19 Q It was on the left side?

20 A Yeah, I think it was on this side.

21 THE COURT: On the left side. I believe  
22 it was. So there was a lot of things on the street.

23 MR. WITTWER: Let the record reflect the  
24 witness is indicating the left side of the  
25 photograph.

J. Toribio - People - cross/Mr. Wittwer

1 Q Now what sort of things were in the street?

2 A Like boulders and yellow big cones not the  
3 small ones, the ones that are more rectangular.

4 Q Were there construction vehicles as well?

5 A I don't remember.

6 Q But you remember the boulders and you remember  
7 the cones?

8 A Yes.

9 Q This argument that was going on between these  
10 two men was happening in that same area of the street,  
11 correct?

12 A Yeah, more so in the middle.

13 Q Sort of the middle of Court Street not far from  
14 where the construction on the left was occurring?

15 A Yeah.

16 Q Thank you. You can put the lights back on.

17 Now, Ms. Toribio, you testified that after there  
18 was this sort of pattern of Mr. McGriff trying to get Mr.  
19 Khalifa away and him coming back that they tumbled into a  
20 storefront?

21 A Uh-huh, yes.

22 Q You didn't see what happened after that point?

23 A While they were in the store, no.

24 Q You did not see anyone stab anyone?

25 A No.

J. Toribio - People - cross/Mr. Wittwer

1 Q But you did note that when you saw them when  
2 they came out Mr. Khalifa was bleeding?

3 A Yes.

4 Q And Mr. McGriff was walking north on Court  
5 Street away from the situation?

6 A Running.

7 Q He was running?

8 A Yes.

9 Q And Mr. Khalifa ran after him?

10 A Yes.

11 Q In the same direction?

12 A Yes.

13 Q Maybe to continuing the fight?

14 MR. MOTTOLA: Objection.

15 THE COURT: Sustained.

16 Q Ms. Toribio you testified that as Mr. Khalifa  
17 was running after Mr. McGriff he was yelling something?

18 A Oh, he said I am still alive when he came out.  
19 He said, I am still alive. I am still alive. That's what  
20 he said then he started running.

21 Q I don't mean to cut you off. He was yelling  
22 that in the direction of Mr. McGriff?

23 A No, it's when he first came out of the store  
24 and he was holding his head and he said I am still alive.  
25 I am still alive. Then he started to run.

J. Toribio - People - redirect

1 Q After Mr. McGriff?

2 A Yeah.

3 MR. WITTWER: Nothing further, Judge.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION BY

6 MR. MOTTOLA:

7 Q Can I approach for distance, Your Honor?

8 THE COURT: Sure.

9 Q So I am clear, again you are about seven feet  
10 from the two men, correct?

11 A Possible, yeah, approximately, yes.

12 Q When you are this distance, was there anything  
13 at all blocking your view?

14 A No.

15 Q Was there any construction machinery blocking  
16 your view?

17 A No.

18 Q Were both men in this location where I am  
19 standing now?

20 A Yes.

21 Q And what was happening when they were seven  
22 feet from you?

23 A They were -- there was a fight.

24 MR. WITTWER: Objection.

25 THE COURT: Overruled.



J. Toribio - People - redirect

1           A       The man with the black hat had hit him, hit the  
2 man with the green shirt and the man with the green shirt  
3 was holding on to him. They fell into the car.

4           Q       And from that distance, were you able to see  
5 any weapons at all in the man in the green shirt's hand?

6                   MR. WITTWER:   Objection. He is going  
7 over same testimony from direct examination.

8                   THE COURT:   Objection is overruled. If I  
9 need the reason. I will ask.

10          A       No, I did not.

11                  MR. MOTTOLA:   Thank you, Ms. Toribio. I  
12 have nothing further.

13                  THE COURT:   Recross?

14                  MR. WITTWER:   No, Your Honor.

15                  THE COURT:   Ms. Toribio, you may step down.  
16 Thank you very much.

17                  All right, ladies and gentlemen. We are  
18 going to take a couple of minutes. I will send you  
19 back to the jury room. Use the facilities. Do not  
20 discuss the case among yourselves. We will bring you  
21 out in a few minutes and continue. Thank you very  
22 much.

23                  THE COURT OFFICER:   Follow me, guys.

24                               (Jury exits courtroom.)

25                  THE COURT:   All right. Use the facilities

Proceedings

1 if you need to. If you want to use the opportunity  
2 to test the system.

3 MR. MOTTOLA: I want the court to know the  
4 witness that we were seeking to obtain from the  
5 witness order, we have her. I have not spoken to her  
6 yet. Can I have ten minutes to speak to her?

7 THE COURT: Yeah.

8 MR. MOTTOLA: Thank you.

9 THE COURT: So brief second call. See if  
10 there is anybody out there.

11 (Whereupon, other cases were called and  
12 this case was recalled as follows:)

13 THE COURT: Recalling the case on trial.

14 THE COURT CLERK: Lorenzo McGriff.

15 THE COURT: All appearances are as  
16 previously noted.

17 THE COURT CLERK: The jury is not present.

18 THE COURT: You have an application?

19 MR. MOTTOLA: I move to vacate the  
20 material witness order for Kadesha Guy.

21 THE COURT: Order is vacated. Is that  
22 somebody's witness?

23 MR. MOTTOLA: That's a detective  
24 investigator.

25 THE COURT OFFICER: Ready for the jury,

Proceedings

1 Your Honor?

2 THE COURT: Yes. Thank you very much.

3 THE COURT OFFICER: Jury entering.

4 (Jury enters courtroom.)

5 THE COURT CLERK: The jury panel is  
6 present and properly seated. Each side waive the  
7 jury roll call?

8 MR. MOTTOLA: So waived.

9 MS. BURKE: So waived.

10 THE COURT: Hello, again. Make yourself  
11 comfortable.

12 Mr. Mottola, whenever you are ready.

13 MR. MOTTOLA: People call Kadesha Guy.

14 THE COURT OFFICER: Ready for the witness,  
15 Your Honor?

16 THE COURT: Yes. Thank you.

17 THE COURT OFFICER: Witness entering.

18 (Witness enters courtroom.)

19 THE COURT OFFICER: Good morning. Step  
20 up. Remain standing. Face the clerk.

21 THE COURT CLERK: Raise your right hand.

22 K A D E S H A G U Y , a witness called by and on behalf  
23 of the People, having first been duly sworn, testifies as  
24 follows: Be seated. Get comfortable.

25 State your name for the record and spell

K. Guy - People - direct

1 your name.

2 THE WITNESS: Kadesha Guy, K-a-d-e-s-h-a

3 G-u-y.

4 THE COURT CLERK: G-u-y?

5 THE WITNESS: Yes. G-u-y. Last name is

6 G-u-y.

7 DIRECT EXAMINATION BY

8 MR. MOTTOLA:

9 Q Good morning, Ms. Guy?

10 A Good morning.

11 Q How old are you?

12 A 23.

13 Q And are you currently working?

14 A Yes.

15 Q Where do you work?

16 A Amazon.

17 Q I want to direct your attention to August 11,  
18 2015 at approximately 1:10 in the afternoon.

19 A Okay.

20 Q Where were you at that time?

21 A Court Street, downtown Brooklyn.

22 Q Do you remember the cross street?

23 A No.

24 Q Could you describe the section of Court Street  
25 you were on?

K. Guy - People - direct

1 A By building 65, Department of Education.

2 Q That's in Brooklyn, right?

3 A Yes.

4 Q Were you in a vehicle or on foot?

5 A Vehicle.

6 Q Were you driving or a passenger?

7 A Driver.

8 Q Were other people with you in that vehicle?

9 A Yes.

10 Q How many other people?

11 A Two.

12 Q At ten after 1:00 on that date, while you were  
13 driving, what, if anything, happened?

14 A I was driving down Court Street and I seen two  
15 guys scuffling.

16 Q These two guys, had you ever seen these two  
17 guys before?

18 A No.

19 Q Could you describe the two men?

20 A Like a Hispanic guy probably like five  
21 something, and African American.

22 Q So, when you say they were scuffling, what  
23 exactly did you see?

24 A Like basically like walking towards the car,  
25 like pushing each other a little bit.



K. Guy - People - direct

1 Q Is that part of Court Street, is it one or two  
2 lanes, do you know?

3 A One lane.

4 Q So you were going in which direction?

5 A Going towards Atlantic.

6 Q Where were these two men in relation to your  
7 car?

8 A Like directly kind of in front of it.

9 Q How close would you say you were to these two  
10 men?

11 A Probably not even like a feet away.

12 Q What happened after they were scuffling near  
13 your car?

14 A They banged my car. I told them to watch out  
15 for my car.

16 Q Could you describe what, if anything, the  
17 African American man was doing?

18 A He stabbed the other guy in like his abdomen  
19 area.

20 Q Did you see how many times?

21 A I am not sure the amount. I know he stabbed  
22 him probably like three times or more.

23 Q Now, at that point, did you know the name of  
24 the African American man?

25 A No.

K. Guy - People - direct

1 Q Did you later learn what his name was?

2 A Yes.

3 Q What was his name?

4 A McGriff.

5 Q I am going to ask you to look around court  
6 right now. If you see Mr. McGriff in court, please point  
7 to him and identify him?

8 A (Pointing.)

9 Q Can you describe what he is wearing?

10 A Right now he is wearing a green sweater.

11 MR. MOTTOLA: Your Honor, indicating the  
12 defendant for the record.

13 THE COURT: Yes.

14 Q I am going to ask the witness be shown a CD  
15 which has been premarked People's 7 for identification.

16 A Okay.

17 Q Ms. Guy, do you recognize that CD?

18 A Yes.

19 Q How do you recognize it?

20 A I saw a video.

21 Q Did you have a chance to watch what is on that  
22 CD?

23 A Yes.

24 Q When did you do that?

25 A Earlier than today, a little bit earlier than

K. Guy - People - voir dire/Ms. Burke

1 today.

2 Q What is on that CD?

3 A It's actually a video of the stabbing and is  
4 the little bang on my car.

5 Q Did you record the video?

6 A No. Somebody else did.

7 Q Where was that person?

8 A In the back seat right behind me?

9 Q Does the video, the recording on that disk,  
10 does it fairly and accurately depict what you saw happening  
11 on Court Street at around 1:10 in the afternoon on August  
12 11, 2015?

13 A Yes.

14 Q At this time, I would ask that the video  
15 premarked People's 7 be entered and received as People's 7  
16 in evidence.

17 MS. BURKE: May I voir dire.

18 THE COURT: Sure.

19 VOIR DIRE EXAMINATION BY

20 MS. BURKE:

21 Q Good morning, Ms. Guy.

22 A Good morning.

23 Q The video that you saw earlier, you didn't take  
24 that video right, you didn't tape it?

25 A No.

K. Guy - People - voir dire/Ms. Burke

1 Q You didn't -- did you give it to the district  
2 attorney's office?

3 A Actually, they --

4 Q It's a yes or no question. Did you give it to  
5 the district attorney's office?

6 A No.

7 Q Did you review it prior to seeing it earlier  
8 today?

9 A Yes.

10 Q When was that?

11 A That was after it happened.

12 Q You reviewed the video?

13 A Uh-huh.

14 Q The video that you reviewed, it's the same  
15 length as the video you reviewed today?

16 A Yes.

17 Q And who took the video?

18 A A friend of mine's.

19 Q Who is this friend?

20 A Her name is Ashley.

21 Q Did Ashley use her phone or your phone?

22 A My phone.

23 Q How did it get to the district attorney's  
24 office?

25 MR. MOTTOLA: Objection.

K. Guy - People - voir dire/Ms. Burke

1 THE COURT: Sustained. If I say  
2 sustained, you don't have to answer.

3 MS. BURKE: Nothing further, Your Honor.

4 THE COURT: Okay. Any objection?

5 MS. BURKE: No.

6 THE COURT: Thank you. People's -- that  
7 will be marked People's 7 in evidence.

8 THE COURT OFFICER: So marked.

9 MR. MOTTOLA: If I can please have it.

10 DIRECT EXAMINATION BY

11 MR. MOTTOLA:

12 MR. MOTTOLA: With the Court's permission,  
13 I would like to play it. Officer, if you can dim the  
14 lights.

15 Q So, Ms. Guy, I am going to play the video, once  
16 then I am going to ask you to describe what we are seeing  
17 after it's done. Okay?

18 (Video played.)

19 Q If you can turn the lights on.

20 So, Ms. Guy, did you hear audio as part of that  
21 video?

22 A Yes.

23 Q Whose voice was that?

24 A That was my voice and my little sister's voice  
25 and my friend's.



K. Guy - People - voir dire/Ms. Burke

1 Q what is depicted in the video, was that from  
2 where you were seated?

3 A Yes -- no.

4 Q So the person who took that video --

5 A -- is behind me.

6 Q Were they behind the driver's seat or passenger  
7 seat?

8 A Driver seat.

9 Q Before that incident that's recorded, can you  
10 tell the jury what was happening between these two men  
11 before the phone was turned on?

12 A They looked like they were just having -- I  
13 don't know if it was like disagreeing or something, but one  
14 guy looked like he was about to push the other guy. And  
15 they looked like they was going to fight until the other  
16 guy got stabbed.

17 Q When you say one guy pushed the other guy?

18 A Uh-huh.

19 Q Which guy pushed which guy?

20 A The African American man.

21 Q Was the pusher?

22 A Yes.

23 Q Okay. Did you ever see any objects or any kind  
24 of weapons in the man in the green shirt's hands?

25 A No.

K. Guy - People - voir dire/Ms. Burke

1 Q Did you see the man in the green shirt strike  
2 the African American man at all?

3 MS. BURKE: Objection, Judge.

4 THE COURT: Don't lead.

5 Q Did you see -- what, if anything, did you see  
6 the man in the green shirt do?

7 A I seen him hold his head.

8 Q When was that?

9 A That was after the stabbing.

10 Q Did you notice anything about his physical  
11 condition after the stabbing?

12 A Yeah, his head looked like it was bleeding a  
13 little bit.

14 Q Did you notice blood anywhere else?

15 A No.

16 MR. MOTTOLA: Your Honor, I am going to  
17 ask the witness be shown an eight and a half by 11  
18 color photo marked People's eight for identification.

19 THE COURT: Counsel, you saw it?

20 MS. BURKE: Yes, Your Honor.

21 Q Ms. Guy, do you recognize that photograph?

22 A Yes.

23 Q What is it a photo of?

24 A Of the stabbing.

25 Q Did you take that photo?

K. Guy - People - voir dire/Ms. Burke

1 A No, it's actually a clip from the video.

2 Q Does that photo fairly and accurately depict  
3 part of what we witnessed in the video?

4 A Yes.

5 Q That's from August 11, 2015?

6 A Yes.

7 MR. MOTTOLA: Your Honor, I would ask that  
8 what's been premarked People's 8 be entered and  
9 received as People's 8 in evidence.

10 MS. BURKE: Quick voir dire.

11 VOIR DIRE EXAMINATION BY

12 MS. BURKE:

13 Q This isn't a photo that you took, correct?

14 A No, it's from video.

15 Q How do you know it's from a video?

16 A Because I like screen shot it from the phone.

17 Q Did you send it to the DA's office?

18 MR. MOTTOLA: Objection.

19 THE COURT: Sustained.

20 Q What did you do with it after you snapshot it?

21 A It was just in my phone.

22 MS. BURKE: Nothing further, Your Honor.

23 THE COURT: No objection? It will be  
24 marked People's 8 in evidence.

25 THE COURT OFFICER: So marked.

K. Guy - People - direct

1 DIRECT EXAMINATION BY

2 MR. MOTTOLA:

3 MR. MOTTOLA: If I can have People's 8,  
4 please.

5 THE COURT OFFICER: (Handing.)

6 MR. MOTTOLA: I am going to publish  
7 People's 8 for the jury.

8 Q Ms. Guy, I am going to ask you, just looking at  
9 this photo, that's People's 8?

10 THE COURT: Counsel, if you need to move  
11 so you can see it, that's fine.

12 Q Can you tell the jury what you see in Mr.  
13 McGriff's hand?

14 A Knife.

15 Q Is that what you saw on August 11, 2015?

16 A Yes.

17 Q The person in the green shirt on the left, did  
18 you ever know that person's name?

19 A No.

20 Q Is that the person that you saw the defendant  
21 stab?

22 A Yes.

23 Q You can put the lights on, I guess. Sorry.  
24 Ms. Guy, after the stabbing, what happened after that?

25 A The cops later met me by Atlantic Mall and

K. Guy - People - direct

1 picked me up.

2 Q So, we just watched the video that's People's 7  
3 in evidence.

4 A Uh-huh.

5 Q So after that video, after you were done  
6 recording that video --

7 MS. BURKE: Objection.

8 THE COURT: Sustained.

9 Q After the video concludes, what was the next  
10 thing that you did?

11 A I pulled over.

12 Q What happened after that?

13 A My friend called the cops.

14 Q Did you see where Mr. McGriff went, in which  
15 direction?

16 A I just seen them run up the block and he made a  
17 right turn. I am not sure. I don't remember what block it  
18 was though.

19 Q Could you describe how he was going in that  
20 direction?

21 A Kind of running.

22 Q The man in the green shirt, did you see him  
23 again?

24 A When -- after he got stabbed, he was also like  
25 running in that direction, but that was couple of minutes



K. Guy - People - direct

1 later.

2 Q It was a couple of minutes?

3 A Probably like a minute or two.

4 Q What happened after that?

5 A They basically was -- he was running down the  
6 block I guess to go find him.

7 MS. BURKE: Objection.

8 THE COURT: Sustained.

9 Q What did you do next?

10 A I went trying to go back home.

11 Q Did there come a time he later that day where  
12 you saw the defendant again?

13 A Yes.

14 Q And how soon after the stabbing was that?

15 A Probably like 15 minutes.

16 Q And when you saw him, did you identify him to  
17 the police?

18 A Yes.

19 Q What did you tell the police happened?

20 MS. BURKE: Objection.

21 THE COURT: Approach.

22 (Whereupon, there is a discussion held off  
23 the record at the bench between the assistants  
24 district attorney, defense counsels and the Court.)

25 Q When you saw him later that day, what did you

K. Guy - People - cross/Ms. Burke

1 -- I will withdraw that question, Your Honor.

2 MR. MOTTOLA: I have nothing further,  
3 Ms. Guy. Thank you.

4 THE COURT: Ms. Burke?

5 CROSS-EXAMINATION BY

6 MS. BURKE:

7 Q Ms. Guy, how did you get to court today?

8 MR. MOTTOLA: Objection.

9 THE COURT: Overruled.

10 A Somebody came and get me.

11 Q Who came and got you?

12 A Two detectives.

13 Q Was that because you didn't want to come?

14 A No.

15 Q Why didn't you come on your own?

16 A Before I didn't come because I was busy. I  
17 work night shift.

18 Q I want to bring your attention back to August  
19 11, 2015. You were riding in the car with two friends,  
20 correct?

21 A My little sister and a friend.

22 Q What is your sister's name?

23 A Brittany.

24 Q And Ashley is the friend?

25 A Yes.

K. Guy - People - cross/Ms. Burke

1 Q Did you have music playing in the car?

2 A Yes.

3 Q Windows up or down?

4 A Down.

5 Q It was hot out that day?

6 A Yeah.

7 Q But you did have music playing?

8 A Yes.

9 Q Could you hear each other talking in the car  
10 above the music?

11 A Yes.

12 Q When you first noticed the man you identified  
13 as Mr. McGriff, where was he standing?

14 A He was standing in the middle of the street.

15 Q In the middle of Court Street?

16 A Yes.

17 Q How far away was Mr. Khalifa, the man you  
18 described as a Hispanic man?

19 A Almost a foot away from my car.

20 Q How far was he away from Mr. McGriff?

21 A Probably couple of inches.

22 Q Couple of inches. So you heard them talking?

23 A No.

24 Q They are a foot away from your car. You didn't  
25 hear them talking?

K. Guy - People - cross/Ms. Burke

1 A No.

2 Q You said that they were arguing?

3 A I said it looked like they was arguing.

4 Q So, you saw them having a conversation?

5 A Yeah, more like a disagreement.

6 Q But you don't know what they were saying to  
7 each other?

8 A Nope.

9 Q Did you hear the Hispanic man call Mr. McGriff  
10 a nigger?

11 A No.

12 Q Did you hear the Hispanic man call Mr. McGriff  
13 a slave?

14 A No.

15 Q Did you hear the Hispanic man tell Mr. McGriff  
16 go back to Africa?

17 A No.

18 Q Did you hear Mr. McGriff tell the man to get  
19 away from him?

20 A No.

21 Q Did you hear Mr. McGriff tell him to leave him  
22 alone?

23 A No.

24 Q But you are a foot away from them, correct?

25 A Yes.

K. Guy - People - cross/Ms. Burke

1 Q And your car windows are down?

2 A Yes.

3 Q You said that at some point you saw them  
4 scuffling, right?

5 A Yes.

6 Q At the time you saw them scuffling, isn't it  
7 true that Mr. Khalifa, the Hispanic man had something in  
8 his hand?

9 A Yes, but I am not sure what it was.

10 Q But you did you see something in his hand?

11 A Yes.

12 Q At the time you noticed the two of them  
13 scuffling, you were talking about what was happening in  
14 front of you with the people in the car, correct?

15 A Yes.

16 Q And as matter of fact, you said to somebody in  
17 the car, he should kick his ass, correct?

18 A No.

19 Q You didn't say kick his ass in the car?

20 A I didn't say that.

21 Q Did somebody in the car say kick his ass?

22 A Yes.

23 Q Who was that?

24 A Ashley.

25 Q Do you know why Ashley said that?



K. Guy - People - cross/Ms. Burke

1 MR. MOTTOLA: Objection.

2 THE COURT: Sustained.

3 Q Do you know who Ashley was referring to when  
4 she said kick his ass?

5 MR. MOTTOLA: Objection.

6 THE COURT: Sustained.

7 Q This statement, kick his ass, was made right  
8 before the two of them started fighting; is that correct?

9 A Yes.

10 Q They were walking towards your car --

11 A Yes.

12 Q -- at the time.

13 As matter of fact, they banged on your car?

14 A Yes.

15 Q You stated that Mr. McGriff stabbed the other  
16 guy in the abdomen?

17 A In the stomach, yes.

18 Q Did you see him stab him in the face?

19 A No.

20 Q Were they always in your view during the time  
21 of the scuffle?

22 A No.

23 Q Did there come a time when they were out of  
24 your view?

25 A Yes.

K. Guy - People - cross/Ms. Burke

1 Q When was that?

2 A That's like when I was driving past them.

3 Q Did you see them go into any other building?

4 A No.

5 Q When you drove past them, were they still on  
6 the street?

7 A Yes.

8 Q And the next time you saw them again were they  
9 still on the street?

10 A Yes.

11 Q Approximately how much time had elapsed between  
12 the time that you saw them bump into your car and the time  
13 that you saw them again on the street?

14 A Probably two minutes after.

15 Q You said that the man in the green shirt was  
16 running after Mr. McGriff; is that correct?

17 A Yes.

18 Q Was he yelling?

19 A I am not sure.

20 Q Did you hear him say anything?

21 A No.

22 Q Approximately how far did you see him run after  
23 Mr. McGriff, how far in distance?

24 A He wasn't too far from him. He was probably  
25 like two feet away, probably three.

K. Guy - People - cross/Ms. Burke

1 Q Running after Mr. McGriff?

2 A Yes, after he was running.

3 Q Mr. McGriff turned the corner to the right you  
4 stated?

5 A Yes.

6 Q Did the man in the green shirt turn the corner  
7 to the right as well?

8 A No, he actually stopped on the corner.

9 Q At any time did you see him go to the right?

10 A No.

11 Q When the man was on the corner, the man in the  
12 green shirt was on the corner, where were you in your  
13 vehicle?

14 A I was like kind of in front of T-Mobile. I  
15 actually pulled over.

16 Q That was on the corner of Livingston and Court  
17 Street?

18 A Yes, you can say that.

19 Q Is that the corner that Mr. McGriff turned?

20 A I think so. I am not 100 percent sure.

21 Q The man in the green shirt, he was on that  
22 corner as well?

23 A Yes.

24 Q Do you at any time render aid to the man on the  
25 corner?

K. Guy - People - cross/Ms. Burke

1 A No.

2 Q How long did you stay pulled over on that  
3 corner?

4 A Probably five minutes.

5 Q And the man in the green shirt, did he stay on  
6 that corner that five minutes?

7 A Yes, he was actually with four other people.

8 Q Is your testimony that the man in the green  
9 shirt was with four other people on the corner of Court  
10 Street and Livingston Street?

11 A Yes, they was actually running after him.

12 Q When you say four people were running after  
13 him, does that mean he had stopped or he was moving?

14 A Who?

15 Q You just testified that four people were  
16 running after him?

17 A With him, the guy with the green shirt, they  
18 was running after McGriff.

19 Q So did the man in the green shirt stop or did  
20 he continue?

21 A He stopped at the corner after he was trying to  
22 chase him down.

23 Q Did he stay on the corner?

24 A Yes.

25 Q You said he stayed on the corner for five

K. Guy - People - cross/Ms. Burke

1 minutes?

2 A Yes.

3 Q You said you stayed on the corner for five  
4 minutes?

5 A Yes.

6 Q You didn't see the man in the green shirt turn  
7 up Livingston Street and chase after Mr. McGriff?

8 A I think he started chasing, but I was pulling  
9 off.

10 Q My question was: Did you see him do it?

11 A No.

12 MS. BURKE: One moment, Your Honor.

13 THE COURT: Sure.

14 (Pause.)

15 Q So your testimony today is that you pulled over  
16 and stayed on the corner of Court and Livingston Street for  
17 five minutes, right?

18 A Yes.

19 Q And you recall testifying in the grand jury on  
20 or about August 13th of 2015?

21 A I am not sure of the date but yes.

22 Q Couple of days after this incident happened,  
23 correct?

24 A Yes.

25 Q And Mr. Mottola was there, the DA, the



K. Guy - People - cross/Ms. Burke

1 assistant DA here?

2 A Yes.

3 Q And you took an oath to tell the truth?

4 A Yes.

5 Q And raised your hand and swore to tell the  
6 truth?

7 A Yes.

8 Q And you recalled the events at that time  
9 because it was closer in time to the incident, correct?

10 A Yes.

11 Q So your memory was clear then?

12 A My memory is still kind of clear.

13 Q You were, at that time, you were asked the  
14 following question and you gave the following answer: Line  
15 22, page nine: so after you observed the punching and  
16 striking with the knife --

17 "ANSWER: Yes.

18 "QUESTION: -- what did you do next?

19 "ANSWER: I was driving to get off Court  
20 Street and drove up to get away from everything."

21 Do you recall giving that answer?

22 A Yes.

23 Q At that time, you didn't testify that you  
24 waited five minutes on the corner, correct?

25 A Yes, I actually pulled over after I was driving

K. Guy - People - cross/Ms. Burke

1 up to get off Court Street.

2 Q At that time, you did not testify that you  
3 waited on the corner five minutes, did you?

4 A No.

5 Q During that testimony you also stated that the  
6 Hispanic guy had pushed Mr. McGriff, right?

7 A I don't remember.

8 Q Is there something that would refresh your  
9 recollection like your grand jury testimony?

10 A Yeah.

11 Q You did review it before you came in to testify  
12 today, right?

13 A Kind of.

14 Q I was going to -- one moment.

15 (Pause.)

16 MS. BURKE: Officer?

17 Q I would ask you to look at page nine and read  
18 the first quarter of the page and when you are done could  
19 you look at me?

20 A Huh?

21 THE COURT: Use that to refresh your  
22 recollection. Read it. When you are done reading  
23 that part, you can look back up at Ms. Burke.

24 THE WITNESS: Okay.

25 Q Ms. Guy, does that refresh your recollection?

K. Guy - People - redirect

1 A Yes.

2 Q Is it true that the Hispanic looking guy was  
3 pushing Mr. McGriff?

4 A Yes.

5 MS. BURKE: Nothing further.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION BY

8 MR. MOTTOLA:

9 Q Can the same document be given to Ms. Guy that  
10 she used to refresh remember recollection?

11 You testified just now the man in the green  
12 pushed Mr. McGriff?

13 A Yes.

14 Q Had Mr. McGriff done anything to the man in the  
15 green first?

16 A Yeah, he pushed him.

17 Q So who pushed who first?

18 A McGriff pushed the Hispanic guy first.

19 Q Thank you.

20 You also testified on cross that you saw  
21 something. You weren't sure what was in the man in the  
22 green's hand, correct?

23 A Yes.

24 Q So we played the video that's People's 7. So  
25 before that video, since we don't have what you saw before

K. Guy - People - redirect

1 the video, you need to tell us. So I am going to ask you  
2 when you first are on Court Street in your car, how far  
3 were you from the defendant and the man in the green before  
4 you started filming?

5 MS. BURKE: Objection.

6 Q Before someone started filming?

7 THE COURT: Overruled.

8 A Almost like a foot away.

9 Q So the first time you notice the defendant and  
10 the other man is when you are about a foot away?

11 A Yeah.

12 Q And the man in the green specifically, did you  
13 see -- did you see him doing anything with his hands?

14 A No.

15 Q Like during the fight?

16 A No.

17 Q What did you see him doing? What, if anything?

18 A Just like he was just trying to back up.

19 Q Did you see him whirling anything above his  
20 head?

21 MS. BURKE: Objection.

22 THE COURT: Overruled.

23 A No.

24 MR. MOTTOLA: No further questions. Thank  
25 you.



P. O. Louard - People - direct

1 THE COURT: Recross?

2 MS. BURKE: No recross, Your Honor.

3 THE COURT: Thank you very much, Ms. Guy.  
4 Thank you. You may step down.

5 MR. MOTTOLA: People call Police Officer  
6 Caleb Louard.

7 THE COURT OFFICER: Ready for the witness,  
8 Your Honor?

9 THE COURT: Yes, thank you.

10 (Witness enters courtroom.)

11 THE COURT CLERK: Officer please raise  
12 your right hand.

13 P. O. C A L E B L O U A R D , a witness called by and  
14 on behalf of the People, having first been duly sworn,  
15 testifies as follows:

16 THE COURT CLERK: Please be seated. State  
17 your name for the record. Watch the chair is on  
18 wheels. Once you are settled state and spell your  
19 name. And give us your shield number and command.

20 THE WITNESS: First name first? Police  
21 Officer Caleb, C-a-l-e-b, Louard, L-o-u-a-r-d.  
22 Shield number 2304, 84th Precinct, New York City  
23 Police Department.

24 DIRECT EXAMINATION BY

25 MR. MOTTOLA:



P. O. Louard - People - direct

1 Q Good afternoon, Officer.

2 A Good afternoon.

3 Q By whom are you currently employed?

4 A New York City Police Department.

5 Q In what capacity?

6 A Police officer.

7 Q How long have you been a member of NYPD?

8 A Over 15 years.

9 Q Which precinct are you currently assigned to?

10 A 84th Precinct.

11 Q And how long have you been in the 84th  
12 Precinct?

13 A Over four years.

14 Q I want to direct your attention to August 11,  
15 2015. Were you working that day?

16 A Yes, I was.

17 Q What hours were you working?

18 A 7:05 a.m. to 3:40 p.m.

19 Q What was your assignment that day?

20 A Patrol.

21 Q What sector were you patrolling?

22 A What we call sector Adam which was -- would  
23 cover roughly Brooklyn Heights area.

24 Q Were you assigned to a patrol car that day or  
25 were you on foot?

P. O. Louard - People - direct

1 A Patrol car.

2 Q Were you the driver that day or recorder?

3 A I was the driver if I remember, yeah.

4 Q I want to direct your attention to  
5 approximately 1:10 in the afternoon on August 11th.

6 A Okay.

7 Q Where were you at that time?

8 A On Cadman Plaza West in Brooklyn Heights.

9 Q That's in Kings County?

10 A Yes, in Kings County.

11 Q What, if anything, happened while you were in  
12 the vicinity of Cadman Plaza West?

13 A We received a radio call a few minutes after  
14 that time.

15 Q And what type of call did you receive?

16 A Assault in progress.

17 Q Did you get a location?

18 A Yes, we did.

19 Q What was the location?

20 A It was Court Street and Livingston Street.

21 Q Did you get a description of any of the  
22 parties?

23 A Yes, I did.

24 Q What was the description?

25 A The description of a victim and a perpetrator.

P. O. Louard - People - direct

1 Q Right. So a physical description?

2 A Yes.

3 Q What was the physical description that you  
4 received?

5 A I received a description of victim as being a  
6 male, possibly Hispanic wearing a green shirt and that's  
7 all I can remember at this time. Male Hispanic probably  
8 wearing a green shirt.

9 Q Did you get a description of the other  
10 individual?

11 A I got a description of a perpetrator, male  
12 black wearing a tan shirt, blue jeans and red and white  
13 sneakers.

14 Q When you received this call, what, if anything,  
15 did you do?

16 A We responded to the location.

17 Q And how quickly would you say it took you or  
18 rather how quickly did you get to Court and Livingston  
19 Street?

20 A From the time the transmission came over the  
21 radio we were in close proximity. So approximately one  
22 minute or so.

23 Q And when you arrived at Court and Livingston  
24 Street, did you find anyone fitting either of the  
25 descriptions?

P. O. Louard - People - direct

1 A No.

2 Q What did you do at that time?

3 A Well, at that time, we began to -- myself and  
4 my partner, we began to look up and down the street for  
5 anyone fitting either description. We didn't see anyone.

6 MS. BURKE: Objection to the "we" Your  
7 Honor.

8 THE COURT: Sustained. Officer, speak to  
9 what you did, you saw, et cetera. Opposed to "we"  
10 did.

11 THE WITNESS: Okay. Understandable.

12 Q So after you couldn't find anyone fitting the  
13 description at Court and Livingston Street, what did you do  
14 next?

15 A Well, at that time there was passersby that  
16 started -- several people were pointing in a certain  
17 direction which was -- what direction is that? Southbound  
18 on Court Street towards Livingston Street. Sorry toward  
19 Schermerhorn Street.

20 Q What did you do after that?

21 A So I continued in the direction that people  
22 were pointing. And once I got to the that corner, then I  
23 -- there were more people actually pointing in the  
24 direction down Schermerhorn Street which was westbound on  
25 Schermerhorn Street towards Clinton. So I went -- would

P. O. Louard - People - direct

1 you like me to continue?

2 Q Yes. Continue.

3 A I continued along the path that people were  
4 pointing to. Once I reached Clinton Street on Schermerhorn  
5 Street, they were pointing southbound on Clinton Street  
6 which is against the flow of traffic. So I actually  
7 continued against the flow of traffic with my lights and  
8 sirens on in that direction toward Atlantic Avenue.

9 Q I will stop you there. So we are clear.

10 So you went from Court and Livingston towards  
11 Schermerhorn Street. You then went towards Clinton from  
12 Schermerhorn Street?

13 A Yes.

14 Q Then you went up towards Atlantic Avenue?

15 A Yes.

16 Q How many blocks have you gone so far  
17 approximately if you remember?

18 A Approximately three or four blocks.

19 Q while you were going up those three or four  
20 blocks, had you found anyone yet?

21 A No.

22 Q who fit either description?

23 A No, I haven't.

24 Q So, now, continue. Now you are at Atlantic  
25 Avenue. What happened next?



P. O. Louard - People - direct

1           A       Once we reached Atlantic Avenue, I just  
2 continued crossing Atlantic Avenue which direction is  
3 southbound. And I believe when I reached -- I believe the  
4 next street was I believe it was Amity Street, it might  
5 have been. And then we were -- there was someone on that  
6 corner also pointing back eastbound on Amity Street. So I  
7 went up that street back to Court Street which -- on the  
8 other side of Atlantic. I continued. I continued toward  
9 -- up Amity Street. It actually turns into -- I believe  
10 it's Dean Street. That's going back eastbound.

11                   I continued up Dean Street. And once I got  
12 close to Boerum Place, that's when I located the victim who  
13 I got as a description as a victim.

14           Q       So, the person that you now found in the  
15 vicinity of Dean and Boerum?

16           A       Yes.

17           Q       Did you know who that person was at that time,  
18 did you know his name?

19           A       No, I didn't know his name.

20           Q       Did you later learn his name?

21           A       Yes.

22           Q       What was his name?

23           A       Can I refer to my notes?

24                   THE COURT: what are you looking at?

25                   THE WITNESS: I am going to look at the

P. O. Louard - People - direct

1 complaint report, police complaint report.

2 THE COURT: You are going to use that to  
3 refresh your recollection?

4 THE WITNESS: To refresh my recollection,  
5 Your Honor.

6 THE COURT: When you are done, you can  
7 look back at Mr. Mottola. Of course, don't read from  
8 that when you answer the question.

9 THE WITNESS: Yes, ma'am. Yes, I am ready  
10 Your Honor.

11 Q Did you later learn what that person's name?

12 A Yes.

13 Q What was that?

14 A Mohammed Khalifa.

15 Q What, if anything, did you observe about Mr.  
16 Khalif's appearance?

17 A When I first observed him, I observed he fit  
18 the description of what was given over the radio and he was  
19 bleeding profusely. As I approached him, as I got closer  
20 to him, I noticed that he was bleeding from multiple stab  
21 wounds, what appeared to be to me multiple stab wounds.

22 Q When you say bleeding profusely, where was he  
23 bleeding from?

24 A Mostly -- most of the blood was coming from his  
25 head. And that's where most of it was coming from. But he

P. O. Louard - People - direct

1 was -- I also observed a couple of stab wounds on his head  
2 and some to his torso, his body. I believe it might have  
3 been his back. And one stab wound to his arm.

4 Q How was -- how would you describe how Mr.  
5 Khalifa was acting when you first found him?

6 A He was walking but he was laboring. He seemed  
7 to be breathing heavy.

8 Q Did he say anything to you? Sorry, withdrawn.  
9 Outside of what you describe as laboring, how  
10 else would you describe how he was on the scene?

11 A What do you mean?

12 Q Was he calm, was he --

13 MS. BURKE: Objection, Your Honor.

14 THE COURT: Overruled.

15 A He wasn't -- he wasn't erratic or anything. He  
16 seemed calm, he seemed determined to continue walking.

17 Q And what did you do when you found him in this  
18 condition?

19 A Well, I kept telling him to stop. And you know  
20 to get down because he appeared to have lost so much blood.

21 MS. BURKE: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q What did you tell him to do?

24 A I told him to get down.

25 Q Did he comply?

P. O. Louard - People - direct

1 A Not immediately, no.

2 Q Did he ultimately get down?

3 A He did. Once he turned, he made a right from  
4 Dean on to Boerum Place and he eventually did, did get  
5 down.

6 Q Did you stay with Mr. Khalifa at that time?

7 A No, I didn't.

8 Q Was anyone else -- were any other police  
9 officers on scene by that point?

10 A Yes, there were numerous police officers on the  
11 scene.

12 Q What about EMS?

13 A EMS was close behind us. Yes, they were on the  
14 scene also.

15 Q You say you didn't stay with Mr. Khalifa?

16 A No, my partner at the time did.

17 Q Where did you go?

18 A Well, myself and another officer, he went in  
19 the direction that he pointed.

20 Q Which direction was that?

21 A Which would be southbound on Boerum Place  
22 toward Bergen Street.

23 Q How far is Bergen Street from where you were on  
24 Dean Street?

25 A One block.

P. O. Louard - People - direct

1 Q Where did you go next?

2 A I went to Bergen Street. And when I reached  
3 Bergen Street, there was another passerby who pointed to  
4 the other side of the street, opposite from where I was on.

5 Q As you were heading towards Bergen Street, what  
6 is the last thing you remember Mr. Khalifa doing before you  
7 headed up to Bergen Street?

8 A Before I headed up to Bergen Street, I left him  
9 with my partner and EMS. He collapsed down onto his knees.

10 MS. BURKE: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q When you left Mr. Khalifa, was he standing or  
13 was he on the ground?

14 A No, he went to his knees. He got down on the  
15 ground. He was on his knees.

16 Q The ambulance was there at that point?

17 A Yes.

18 Q That was the last time you saw him before you  
19 went to Bergen Street?

20 MS. BURKE: Objection, Your Honor.

21 THE COURT: Overruled.

22 A Yes, that was.

23 Q What happened once you got to Bergen Street?

24 A Once I got to Bergen Street, a passerby pointed  
25 across the street from the -- I was on the north side of



P. O. Louard - People - direct

1 Bergen Street at Boerum Place. She pointed to the south  
2 side of the street.

3 Q Now, you said you were with another officer?

4 A Yes.

5 Q Who was that other officer?

6 A Police Officer Isaacs.

7 Q Were you and Officer Isaacs both in uniform?

8 A Yes.

9 Q Did you have your firearm out?

10 A After she pointed I did.

11 Q So, someone points, then you pull out your  
12 firearm?

13 A Yes.

14 Q Why did you take out your firearm at that  
15 point?

16 MS. BURKE: Objection.

17 THE COURT: Overruled.

18 A Where the lady pointed was -- there was a  
19 minivan there. I didn't see anyone. So I felt that the  
20 suspect may have been behind the minivan.

21 Q Could you see behind that minivan at all?

22 A No, I couldn't see anyone behind the minivan.

23 Q What did you do after your firearm was out?

24 A I went over to the minivan, went around the  
25 rear of the minivan, and I found who fit the description of

P. O. Louard - People - direct

1 the perpetrator.

2 Q The person that you saw behind the minivan, did  
3 you know who they were at that time? Did you know their  
4 name at that time?

5 A Not at that time, no.

6 Q Did you later learn that person's name?

7 A Yes, I did.

8 Q What was that person's name?

9 A Can I refer to my notes?

10 THE COURT: Yes. Let us know what you are  
11 looking at.

12 THE WITNESS: The arrest report, in order  
13 to recollect my memory.

14 THE COURT: Refresh your memory. Use that  
15 report and let us know when you are finished doing  
16 that. When you answer you will not be reading from  
17 any documents.

18 THE WITNESS: I am ready.

19 Q What was that person's name?

20 A Yes, Mr. Lorenzo McGriff.

21 Q I am going to ask you now if you look around  
22 court, if you see Mr. McGriff in court, could you please  
23 point to him and identify him?

24 A Yes, I do. Mr. McGriff is the gentleman  
25 sitting in the olive drab green sweater and glasses on.

P. O. Louard - People - direct

1 MR. MOTTOLA: Indicating the defendant for  
2 the record.

3 THE COURT: Yes, thank you.

4 Q When you first observed the defendant behind  
5 this minivan, what position was he in?

6 A He was down on the ground near the bottom of  
7 the minivan.

8 Q You found him he was down on the ground  
9 already?

10 A Yes.

11 Q Had you said anything to him prior to that?

12 A No, I hadn't seen him prior to coming around  
13 the minivan.

14 Q Did you order him down on the ground at that  
15 point?

16 MS. BURKE: Objection, Your Honor.

17 THE COURT: Overruled.

18 A No, sir. He was already down.

19 Q Once you came around and saw the defendant,  
20 what happened next?

21 A well, he attempted to get up and both Officer  
22 Isaacs and I pushed him back down and attempted to place  
23 him under arrest.

24 Q When you say you attempted to place him under  
25 arrest, what, if anything, was the defendant doing?

P. O. Louard - People - direct

1           A     well, he didn't immediately give both of his  
2 arms upon request to be handcuffed.

3           Q     Ultimately he was handcuffed?

4           A     Yes.

5           Q     Were you the arresting officer in this case?

6           A     Yes, I was.

7           Q     Did you notice any injuries to Mr. McGriff at  
8 all throughout your interaction with him that day?

9           A     No.

10          Q     Officer, I am going to ask this witness be  
11 shown what's premarked People's 9 for identification. It's  
12 a CD.

13                   Officer Louard, do you recognize what's been  
14 premarked as People's 9?

15          A     Yes.

16          Q     What do you recognize it to be?

17          A     This is a CD of the arrest that occurred on the  
18 day in question.

19          Q     How do you know that's a video of the arrest?

20          A     Because I initialled and dated this very video.

21          Q     Did you watch that video?

22          A     Yes, I did.

23          Q     When did you watch it?

24          A     I watched it on December 12th and I watched it  
25 again this morning.

P. O. Louard - People - direct

1 Q Does that video fairly and accurately depict  
2 the arrest of the defendant on August 11, 2015?

3 A Yes, it does.

4 MR. MOTTOLA: Your Honor, at this time I  
5 ask what was premarked People's 9 be entered and  
6 received as People's 9 in evidence.

7 MS. BURKE: No objection.

8 THE COURT: People's 9 in evidence.

9 THE COURT OFFICER: So marked.

10 Q Do you know where this video is from, at which  
11 location?

12 A Location, it's on Bergen Street. I can't  
13 remember the exact address on Bergen Street. Near the  
14 intersection of Boerum Place.

15 Q Officer Louard, I am going to direct your  
16 attention to the screen. Officer Louard, I am going to ask  
17 you to kind of describe what the video is showing to the  
18 jury.

19 A Describe it now?

20 Q Yes.

21 A All right. white minivan, and that's the  
22 defendant, Mr. McGriff, got down to the ground. That's my  
23 leg. The first person you seen come around, that's Officer  
24 Isaac who is the first officer to push him back down as he  
25 tried to get up. And that's -- there is a third officer I



P. O. Louard - People - direct

1 am not sure who that is at that time. And we are  
2 handcuffing, attempting to handcuff the defendant.

3 Q I am going to stop the video. It's at 1:28. I  
4 am going to back it up to the beginning to play it one more  
5 time. I made the screen larger.

6 A Again, that's the white minivan that I spoke of  
7 earlier. That's the defendant, Mr. McGriff, behind the  
8 minivan. That's me coming around the minivan. That's  
9 Officer Isaac. He tries to get up, pushes him back down  
10 and we are handcuffing the defendant at this time. Give me  
11 one second.

12 Q So I paused the video at 1:27 and 28 seconds.  
13 I am going to direct your attention to the top,  
14 the top left of the white minivan. Can you describe what's  
15 next to the white minivan top left, what would be the  
16 passenger side like up here in this direction?

17 A That appears to be myself approaching the  
18 minivan.

19 Q So at that point, you're on the passenger side  
20 of the white minivan, correct?

21 A Yes.

22 Q Can you see or were you able to see anyone at  
23 all behind that white minivan at this point?

24 A Not at that point, no.

25 Q Had you given any verbal commands at all to

P. O. Louard - People - direct

1 anyone behind that minivan?

2 A No, sir. I didn't see anyone. And I didn't  
3 give any verbal commands to anyone at that point.

4 Q Now, it's now 1:27 32 seconds. So five seconds  
5 passed officer. Where are you in this video clip?

6 THE COURT: Have him use the laser  
7 pointer.

8 A These are my legs here. This is a tree. So  
9 that's where I am.

10 Q Is that the first time you saw --

11 THE COURT: Indicating?

12 Q Indicating the set of legs that's closest to  
13 the tree closer to Mr. McGriff?

14 THE COURT: Indicating the very top of the  
15 screen just to the right of the midway point.

16 Q Is this the first time that you saw Mr. McGriff  
17 that day?

18 MS. BURKE: Objection.

19 THE COURT: Sustained.

20 A Yes, yes, it was.

21 THE COURT: So when you hear me say  
22 sustained it means you don't answer.

23 That answer is stricken. The jury is to  
24 disregard that.

25 MR. MOTTOLA: You can turn the light on.

P. O. Louard - People - direct

1 Q So after Mr. McGriff was in cuffs, what  
2 happened next?

3 A Another set of officers performed a show up.

4 Q No, don't.

5 THE COURT: Again, that's stricken. The  
6 jury is to disregard the last statement.

7 Q Where did you process Mr. McGriff?

8 A 84th Precinct stationhouse.

9 Q Before you transported him to the 84th  
10 Precinct, did you search his person?

11 A Yes, I did.

12 Q Did you search him on scene?

13 A Yes, I did.

14 Q Did you ever recover a knife from his person?

15 A No, I did not.

16 Q Did you recover a cell phone?

17 A Yes, he had a cell phone on him.

18 Q What was done with that cell phone after the  
19 arrest?

20 A It was given to Mr. McGriff's wife.

21 Q Now, when you went back to the police precinct,  
22 you processed Mr. McGriff's arrest?

23 A Yes.

24 Q As part of that processing, do you take what is  
25 known as pedigree information.

P. O. Louard - People - direct

1 A Yes, I do.

2 Q Did Mr. McGriff give you his height and weight?

3 A Yes.

4 Q Can you tell the jury what the height and  
5 weight he gave you that day was?

6 A Yes.

7 THE WITNESS: Your Honor, I need to refer  
8 to my arrest report.

9 THE COURT: You can use it to refresh your  
10 recollection. You are not to read from the document.

11 A I am done. Yes, six-foot-one 295 pounds is the  
12 height and weight that I got on that day.

13 Q Did you take any photographs at the precinct  
14 that day?

15 A Yes, I did.

16 Q What did you take a photograph of?

17 A I took a full body photograph of Mr. McGriff as  
18 well as mugshots.

19 MR. MOTTOLA: Your Honor, I am going to  
20 ask the witness be approached with an eight and a  
21 half by 11 color photo shown to counsel marked as  
22 People's 10 for identification.

23 THE COURT: Give me one second.

24 (Pause.)

25 THE COURT: Sorry.

P. O. Louard - People - direct

1 Q Do you recognize People's 10 for  
2 identification?

3 A Yes, I do.

4 Q How do you recognize it?

5 A It's a photo that I took in the holding cell  
6 arrest processing area of the precinct.

7 Q Did you take that photograph the day you  
8 arrested Mr. McGriff?

9 A Yes, I did.

10 Q Is that photo a fair and accurate  
11 representation of what Mr. McGriff was wearing the day you  
12 arrested him?

13 A Yes, it is.

14 MR. MOTTOLA: Your Honor, at this point I  
15 would ask what was premarked People's 10 for  
16 identification be entered and received as People's 10  
17 in evidence.

18 MS. BURKE: Other than an objection to  
19 relevance, I have no objection to it coming in.

20 THE COURT: Objection as to relevance is  
21 overruled. People's 10 in evidence.

22 Q Did you have any other interaction with Mr.  
23 Khalifa after you arrested Mr. McGriff?

24 A I did not, no.

25 Q Do you know if he went to the hospital?



P. O. Louard - People - direct

1 A Yes, he was transported to the hospital.

2 Q Do you know which hospital?

3 A I have to look at my notes to find that.

4 THE WITNESS: Your Honor, may I?

5 THE COURT: Again, what are you looking  
6 at?

7 THE WITNESS: I am looking to see if I can  
8 recollect my memory with the aided report worksheet.

9 Q officer, which document would refresh your  
10 recollection?

11 A The aided report worksheet.

12 MR. MOTTOLA: If I can hand up the report  
13 to the officer.

14 THE COURT: Yes.

15 THE WITNESS: My memory is refreshed, Your  
16 Honor.

17 Q Which hospital?

18 A Yes, he was transported to Methodist Hospital  
19 in Brooklyn.

20 MR. MOTTOLA: Thank you, Officer Louard.  
21 I have no further questions.

22 THE COURT: Counsel, approach for a  
23 second.

24 (Whereupon, there is a discussion held off  
25 the record at the bench between the assistant

P. O. Louard - People - direct

1 district attorney, defense counsel and the Court.

2 THE COURT: All right, Officer Louard. I  
3 am going to have you step down. We are going to have  
4 you back at 2:15 sharp outside of the courtroom. In  
5 the interim, please don't discuss your testimony with  
6 anyone. We will see you back at 2:15.

7 Thank you.

8 So, ladies and gentlemen, I have a few  
9 other matters that I have to attend to this morning.

10 You can see there are a number of lawyers  
11 and people in the audience. I am not going to have  
12 you wait around while I do that. I am going to send  
13 you out a little bit early for lunch if you can brave  
14 the cold weather.

15 Be back in the jury room 2:15 and  
16 continue. In the interim please don't discuss the  
17 case among yourselves. I will see you promptly 2:15.  
18 Thank you for your attention.

19 (Jury exits courtroom.)

20 THE COURT: Second call for you at 2:15.

21 (Lunch recess taken.)

22 (Afternoon session.)

23 THE COURT CLERK: Recalling the case on  
24 trial, Lorenzo McGriff, all parties are present  
25 outside the presence of the jury.

P. O. Louard - People - direct

1 THE COURT: You want to see if the officer  
2 is outside?

3 MR. MOTTOLA: He is here. If you want to  
4 bring the overhead down.

5 THE COURT: For the record Officer Louard  
6 has been recalled to the stand. The jury is not yet  
7 present.

8 THE COURT OFFICER: Ready for the jury,  
9 Your Honor?

10 THE COURT: Yes, thank you.

11 THE COURT OFFICER: Jury entering.

12 (Jury enters courtroom.)

13 THE COURT CLERK: Jury panel is present  
14 and properly seated. Each side waive the jury roll  
15 call?

16 MR. MOTTOLA: So waived.

17 MS. BURKE: So waived.

18 THE COURT CLERK: Officer, I remind you  
19 you are still under oath.

20 THE COURT: Good afternoon. Those of you  
21 with coats on must have gone outside. Was it bad?  
22 Make yourself comfortable. Warm yourselves up a  
23 little bit.

24 Ms. Burke whenever you are ready.

25 CROSS-EXAMINATION BY



P. O. Louard - People - cross/Ms. Burke

1 MS. BURKE:

2 Q Good afternoon, Officer.

3 A Good afternoon.

4 Q Is your testimony that Mr. Khalifa was not  
5 acting erratic. That's your testimony today?

6 A Not in front of me, no, he wasn't, no.

7 Q You had an opportunity to observe him for quite  
8 some time, correct?

9 A From the time I seen him to the time I left  
10 him.

11 Q How much time was that?

12 A Maybe a minute or two.

13 Q When you first approached Mr. Khalifa you told  
14 him to get on the ground, correct?

15 A Yes.

16 Q He didn't comply, did he?

17 A No.

18 Q You told him repeatedly to get on the ground,  
19 correct?

20 A Yes.

21 Q More than once?

22 A More than once, yes.

23 Q More than twice?

24 A More than twice.

25 Q More than three times?

P. O. Louard - People - cross/Ms. Burke

1 A Possibly.

2 Q He didn't comply, did he?

3 A No, not immediately.

4 Q Matter of fact, he continued to walk, right?

5 A Yes.

6 Q Against your command, correct?

7 A Yes.

8 Q Because you had told him to stop, right?

9 A Yes.

10 Q But he continued to walk?

11 A Yes.

12 Q And he was screaming things at that time,  
13 wasn't he? It's a yes or no question.

14 A I don't recall if he was screaming something at  
15 that time.

16 Q So the entire minute, one to two minutes, you  
17 observed him, it's your testimony that you don't recall if  
18 he was screaming?

19 A Well, not at the time when I first contacted  
20 him. He did yell something right before he went down to  
21 the ground.

22 Q And it's your testimony earlier today that he  
23 collapsed. That was your statement, correct?

24 A Yes, I believe that was stricken, but yes.

25 Q Is it your testimony now that he collapsed?



P. O. Louard - People - cross/Ms. Burke

1 A I could describe it as such, yes.

2 Q In your prior testimony, you didn't describe it  
3 as such, correct?

4 A Are you referring to earlier today?

5 Q In any of your prior testimony, you didn't  
6 describe it as him collapsing, correct?

7 A I would have to read the minutes probably. I  
8 don't recall if I said that word.

9 Q You testified three times in this matter; isn't  
10 that correct, Officer?

11 A Including this time?

12 Q Yes.

13 A Sounds right.

14 Q You testified in the grand jury, correct?

15 A Yes, I did.

16 Q That was August of last year?

17 A Yes.

18 Q You testified at a hearing, correct?

19 A Yes, I did.

20 Q That was sometime this year, correct?

21 A Yes.

22 Q And you testified today, correct?

23 A Yes, I did.

24 Q Today is the first time that you ever said that  
25 Mr. Khalifa collapsed, correct?

P. O. Louard - People - cross/Ms. Burke

1 A Like I said, I would have to read the minutes.

2 Q Is there something that would refresh your  
3 recollection?

4 A If you have the minutes of that testimony.

5 MS. BURKE: May I approach the witness?

6 THE COURT: Let Mr. Mottola know what you  
7 are looking at.

8 Q I am handing you two items. One is packaged  
9 with a clip and the other are several pieces of loose  
10 paper.

11 Officer, I direct your attention to page 28 of  
12 the loose papers if that would help?

13 A Okay.

14 Q I direct your attention specifically to line  
15 18.

16 A Yes.

17 Q You had an opportunity to review it?

18 A Yes.

19 Q Does it refresh your recollection?

20 A Yes.

21 Q Around do you recall ever stating that Mr.  
22 Khalifa collapsed in your prior testimony?

23 A No, I didn't say that then.

24 Q would you like to review your hearing testimony  
25 to see if you ever said it then?

P. O. Louard - People - cross/Ms. Burke

1 A Sure.

2 MS. BURKE: May I get the item back?

3 THE COURT: If you can point to a specific  
4 page or pages and lines?

5 Q Officer, I direct your attention to page nine  
6 of your hearing minutes. I would like you to review that.  
7 Page nine, and half of page ten, please.

8 A I reviewed it.

9 Q In that testimony, do you at any time state  
10 that Mr. Khalifa collapsed?

11 A No, I didn't say that in the same words no.

12 Q You also stated earlier that Mr. Khalifa was  
13 not acting erratic; is that correct?

14 A Correct.

15 Q Was he acting belligerent?

16 A I don't recall him being belligerent with me,  
17 no.

18 Q Do you recall him being agitated?

19 A Can you elaborate, please?

20 Q Was he being combative with you?

21 A No.

22 Q I wanted to bring your attention to after you  
23 had encountered Mr. Khalifa, you left to look for  
24 Mr. McGriff, correct?

25 A Yes.

P. O. Louard - People - cross/Ms. Burke

1 Q It was around the corner from where you left  
2 Mr. Khalifa, right?

3 A Yes.

4 Q And you and your partner and other police  
5 officers went to look for Mr. McGriff, correct?

6 A Myself and another officer, yes.

7 Q Was it only two officers or more than two?

8 A I left Mr. Khalifa with one other officer that  
9 was directly with me. There were many officers near the  
10 scene.

11 Q By the time you came up on Mr. McGriff, there  
12 were at least four officers there, correct?

13 A I didn't count how many officers were there.

14 Q To your recollection, do you recall how many  
15 were there?

16 A I can't say how many, but more than the two of  
17 us.

18 Q And at what point did you draw your weapon?

19 A At the point when I started to cross the street  
20 toward the minivan that was seen in the video.

21 Q Drawing your attention to this video, you  
22 approached the minivan from behind, correct?

23 A Yes.

24 Q And you were on the passenger side behind the  
25 van?

P. O. Louard - People - cross/Ms. Burke

1 A Yes.

2 Q You and several other officers, correct?

3 A Yes.

4 Q And it was your testimony earlier that you  
5 didn't see Mr. McGriff at that time?

6 A Correct.

7 Q But you had your gun drawn?

8 A Yes.

9 Q Didn't you yell for someone to get down?

10 A Excuse me?

11 Q Didn't you yell for someone to get down?

12 A No.

13 Q So you have your weapons drawn, but you don't  
14 say get down. You are not making any commands?

15 A I didn't see anyone to make any commands to.

16 Q You didn't say stop?

17 A At which point in time?

18 Q As soon as you had your weapon out?

19 A No.

20 Q As you were walking up to the van, did you say  
21 stop?

22 A No.

23 Q As you were coming across the street towards  
24 the van, did you yell stop?

25 A I don't believe so, no.



P. O. Louard - People - cross/Ms. Burke

1 Q Did you hear any of your fellow officers yell  
2 stop?

3 A I don't recall hearing anyone yell stop.

4 Q Did you hear any of your fellow officers say  
5 get down, get down?

6 A I don't recall hearing anyone say that.

7 Q So it's your testimony that two, three or four  
8 New York City police officers with guns drawn approached  
9 the area by the van and no one said anything?

10 A I didn't say that no one said anything. You  
11 asked me if I said something specifically as in stop. I  
12 didn't say those words.

13 Q What specifically did you say?

14 A I would have said: Show me your hands.

15 Q What did the other officers say?

16 A I can't recall. I can't testify what other  
17 officers said.

18 Q Why can't you?

19 A Because I don't recall what any other officer  
20 said.

21 Q So you don't know if any other officer said,  
22 get down?

23 A No, I don't know.

24 Q You don't know if any other officer said stop?

25 A No, I don't know.

P. O. Louard - People - cross/Ms. Burke

1 Q But you only know that you said show me your  
2 hands?

3 A Correct.

4 Q At what point in time did you say show me your  
5 hands?

6 A Upon the site of Mr. McGriff.

7 MS. BURKE: Your Honor, permission to play  
8 the video?

9 THE COURT: Sure.

10 (Video plays.)

11 Q Officer, can you turn the lights please.

12 Do you see Mr. McGriff at any time you're on the  
13 other side of the white van correct?

14 A Yes. I didn't see him at that point until now.

15 Q When you say until now, is that after you had  
16 passed the back of the van?

17 A Yes.

18 Q Approximately how much time would you say  
19 elapsed between the time Mr. McGriff was on the ground and  
20 the time that you came around the van, matter of seconds?

21 A Can you repeat that question, please.

22 Q Approximately how much time would you say had  
23 elapsed between the time that you came around the van and  
24 the time that Mr. McGriff was on the ground?

25 A That he was first on the ground?

P. O. Louard - People - cross/Ms. Burke

1 Q Yes.

2 A As I came around the van, he was already on the  
3 ground. I couldn't tell you how long he was on the ground  
4 for because I didn't see him before I came around the van.  
5 I can't tell you how much time would have elapsed.

6 Q I am going to try to reverse this. The video  
7 says 1:27 and 25 seconds, correct?

8 A Yes.

9 Q Looking at the video, at 1:27 and 31 seconds,  
10 you come on to the screen correct?

11 A Yes.

12 Q So it's a matter of six seconds between the  
13 time you say you came and saw Mr. McGriff on the ground and  
14 you approached him, correct?

15 A You are saying the time I would have first seen  
16 him on the ground and approached him is how many seconds?

17 Q Six seconds?

18 A Six seconds?

19 Q That is the question.

20 A You would have to rewind that.

21 (Video playing.)

22 Q I will start the video at 1:27 and 22 seconds.  
23 I think I am going to start the video. 23 seconds, he's  
24 not on the ground yet, 26, 27 seconds he is on the ground.  
25 At that time, 31 seconds, the officers are there, correct?

P. O. Louard - People - cross/Ms. Burke

1 A Right.

2 Q So, I was mistaken. It was a matter of four  
3 seconds, correct?

4 A According to the video, yes.

5 Q Can we have the lights, please?

6 And you said that Mr. McGriff was resisting you;  
7 is that correct?

8 A Yes.

9 Q You said that's because he did not hand you his  
10 arms immediately?

11 A Not only did he not hand us the arms, but in  
12 attempting to get one of his arms behind him, he resisted  
13 by tensing his arm.

14 Q And that's visible on this video we just  
15 viewed?

16 A I am not sure. I would have to look at it.

17 Q Let's look at it again.

18 MS. BURKE: Sorry, Your Honor.

19 THE COURT: No problem.

20 A Mind if use the laser pointer if I need to?

21 Q I don't mind. Can we get the lights, Officer.

22 (Video playing.)

23 Q He is on the ground. You got your knee in his  
24 back --

25 THE COURT: The witness is going to

P. O. Louard - People - cross/Ms. Burke

1 testify or the video plays. If you want to ask the  
2 witness what's happening, that's fine.

3 Q I am going to back it up so I can ask a  
4 question frame by frame if I need to.

5 So at 1:27 31 seconds, what are you doing?

6 A I was still telling him to show me his hands at  
7 the time you stated.

8 Q Have you made physical contact with him?

9 A Not at that time, no. Officer Isaac was first  
10 to make physical contact.

11 Q Are you standing next to him?

12 A Yes, now at this point, now, I am close to him.

13 Q Can you show with the laser pointer where you  
14 are standing?

15 A I can't really see it. May be if you rewind a  
16 little bit so I can see. Okay.

17 Q I paused it at 1:27 33 seconds. Are you in  
18 this frame at all?

19 A Yes.

20 Q Can you point with the laser pointer and show  
21 where you are?

22 A I believe this is me here.

23 MS. BURKE: Your Honor, pointing to sort  
24 of the middle top portion of the frame, looks to be  
25 two legs spread apart, next to two legs which seem to



P. O. Louard - People - cross/Ms. Burke

1 be in a walking position.

2 Q I am going to stop it here 1:27 36 seconds.

3 Are you in this frame?

4 A Yes.

5 Q Using the pointer laser pointer, can you point  
6 where you are in this frame?

7 A (Pointing.) That's me.

8 Q Pointing to top middle portion of the frame?

9 THE COURT: With one leg bent.

10 Q With one leg bent. At this time were you  
11 telling Mr. McGriff to show his hands?

12 A I believe at that time, I would have holstered  
13 my weapon and I am going to assist Officer Isaac in  
14 grabbing his hands.

15 Q My question was: At this time did you show  
16 Mr. McGriff, did you ask Mr. McGriff to show his hands?

17 A Before that.

18 Q So you didn't say it at this time?

19 A Before that.

20 Q So you didn't say it at this time?

21 A No, not at that time.

22 Q I am continuing with the video. I am stopping  
23 at 1:27 38 seconds. Can you show with the laser pointer  
24 where you are in this video?

25 A No, I can't really see where I am.

P. O. Louard - People - cross/Ms. Burke

1 Q Are you having physical contact with  
2 Mr. McGriff at this time?

3 A I believe so.

4 Q And you would say that a matter of maybe four  
5 seconds elapsed; is that correct?

6 A From when?

7 Q From the last two frames?

8 A Maybe four or five seconds.

9 Q Do you know at this time if Mr. McGriff had  
10 been cuffed?

11 A No, he has not.

12 Q How can you tell that from this video if you  
13 can't see where you are?

14 A My recollection of the incident and I believe  
15 this is his right arm here, Mr. McGriff's right arm.

16 Q You believe. But you don't know for certain?

17 A No, I would like to -- have to see it playing.

18 Q Continuing to play the video. Stopping at 1:27  
19 and 41 seconds.

20 Do you know where you are in the video now,  
21 Officer?

22 A No.

23 Q And at this point can you tell if Mr. McGriff  
24 had been cuffed?

25 A I can't tell from the video, no.

P. O. Louard - People - cross/Ms. Burke

1 Q Continuing to play the video.

2 officer, did you see if an officer stepped away  
3 from the video?

4 A I see that officer, yes.

5 Q Do you know where you were in this video?

6 A I still can't see where I am in the video  
7 definitively.

8 Q But Mr. McGriff is still on the ground,  
9 correct?

10 A Yes.

11 Q Continuing to play the video.

12 At this point in time, can you see where you are  
13 in the video?

14 THE COURT: Identify the time.

15 Q 1:27 50 seconds.

16 Can you see where you are in the video?

17 A No, I can't.

18 Q You would agree with me, Mr. McGriff is not  
19 prone on the ground at this point?

20 A Excuse me?

21 Q Would agree with me Mr. McGriff is not prone on  
22 the ground at this point?

23 A No, I cannot agree with you.

24 Q Can you see Mr. McGriff on the ground?

25 A I see him on the ground here, yes.

P. O. Louard - People - cross/Ms. Burke

1 Q Continuing to play.

2 Stopping the video at 1:27 57 seconds. Can you  
3 point out to the jury where you are in this portion of the  
4 video?

5 A No, I cannot.

6 Q Can you tell the jury where Mr. McGriff is at  
7 this point in time?

8 A Mr. McGriff would be right here.

9 Q Are you indicating that he is on the cement  
10 ground at this time?

11 A Yes.

12 Q Approximately how many officers are standing  
13 around you and Mr. McGriff?

14 A I can't tell from this video, but it's -- I  
15 would say more than three, probably more than four.

16 Q More than four?

17 A Looks like it's more than four.

18 Q May I have the lights, please?

19 To your memory, how long did it take to cuff  
20 Mr. McGriff?

21 A At the time, I wasn't counting how long it was  
22 taking to cuff him.

23 But if I could see a point where I know he is  
24 cuffed in the video, then I would answer.

25 Q would you like to go through the video again?



P. O. Louard - People - cross/Ms. Burke

1 A No, if you could continue.

2 Q At this point in the video, is it your  
3 testimony you don't know if he was cuffed?

4 A I don't know for sure, no.

5 Q Did you use your own cuffs or someone else's  
6 cuffs to cuff Mr. McGriff?

7 A I don't recall if I lent my cuffs to assist,  
8 but Officer Isaac started to cuff first. So he would have  
9 used his handcuffs. I may have lent my cuffs to assist. I  
10 am not sure.

11 Q During this encounter, other than saying, show  
12 me your hands, did you have any other conversation with  
13 Mr. McGriff?

14 A None that I recall.

15 Q Do you recall saying anything to him as he was  
16 on the ground?

17 A None that I recall.

18 Q Did you arrest him for resisting arrest?

19 MR. MOTTOLA: Objection.

20 THE COURT: Overruled.

21 THE WITNESS: I would have to, Your Honor,  
22 review my arrest report.

23 THE COURT: Okay. Go ahead.

24 THE WITNESS: To recollect from memory. My  
25 memory is refreshed.



P. O. Louard - People - cross/Ms. Burke

1 THE COURT: You can answer.

2 A No, I didn't charge him resisting arrest.

3 Q You stated that you gave Mr. McGriff's cell  
4 phone to his wife, correct?

5 A Yes.

6 Q Do you know if it was working?

7 A I can't recall if it was working or not.

8 Q Between the time you got your radio run about  
9 the assault in progress and the time that you apprehended  
10 Mr. McGriff, how much time had elapsed?

11 A I don't know exactly how much time.

12 Q Can you approximate?

13 THE WITNESS: Your Honor, may I look in my  
14 memo book copies?

15 THE COURT: Yes.

16 THE WITNESS: To recollect my memory.

17 THE COURT: If it will help refresh your  
18 recollection, of course.

19 A My memory is refreshed. I would say  
20 approximately 12 to 15 minutes.

21 Q And the first time that you got the radio run,  
22 you said it took a minute to get to the corner of  
23 Livingston and Court Street; is that correct?

24 A Approximately, as I recall.

25 Q When you got to the corner of Livingston and

P. O. Louard - People - cross/Ms. Burke

1 Court Street, did you see a man with a green sweater or  
2 shirt on?

3 A No.

4 Q Did you see Kadesha Guy there?

5 A No.

6 Q After you left Livingston and Court, which  
7 direction did you go?

8 A I proceeded southbound on Court Street and I  
9 stopped at Schermerhorn Street.

10 Q So I am clear, you're in your squad car,  
11 correct?

12 A Yes.

13 Q Marked squad car?

14 A Yes.

15 Q You are driving or recording?

16 A Driving.

17 Q You're driving. You stop at Livingston and  
18 Court Street, correct?

19 A Yes, initially, yeah.

20 Q How long did you stay at Livingston and Court  
21 Street?

22 A Not long, approximately a minute or two.

23 Q A minute or two.

24 During that one to two minutes, you did not see  
25 Mr. Khalifa, correct?

P. O. Louard - People - cross/Ms. Burke

1 A No.

2 Q Didn't see a man in a green shirt, correct?

3 A No.

4 Q You didn't see Kadesha Guy, correct?

5 A No, I didn't.

6 Q You proceed down Court Street at that time  
7 towards Schermerhorn Street?

8 A Yes.

9 Q After you got to Schermerhorn and Court Street,  
10 which direction did you drive?

11 A West on Schermerhorn Street.

12 Q Which is towards which block, which name  
13 street?

14 A Repeat that.

15 Q Which name street did you go towards?

16 A Clinton Street.

17 Q So that means you took a right on Schermerhorn  
18 Street?

19 A Yes.

20 Q How long, how far, did you travel on  
21 Schermerhorn Street going towards Clinton?

22 A The length of the block, that's the next street  
23 over.

24 Q You traveled one block?

25 A Yes.

P. O. Louard - People - cross/Ms. Burke

1 Q During that one block, did you encounter Mr.  
2 Khalifa?

3 A No.

4 Q Did you encounter Mr. McGriff?

5 A No.

6 Q After you got to the corner of Clinton and  
7 Schermerhorn Street, which direction did you drive?

8 A Southbound on Clinton Street.

9 Q Would that be a left on Clinton Street?

10 A Yes.

11 Q When you turned left on Clinton Street, did you  
12 see Mr. Khalifa?

13 A No.

14 Q Did you see Mr. McGriff?

15 A No.

16 Q How far did you travel on Clinton Street?

17 A I traveled until I reached Amity Street.

18 Q Is that past Atlantic Avenue?

19 A Yes.

20 Q Is that past Dean Street?

21 A No, Dean stops at Court Street. So it would be  
22 -- if it was a continuous street, it would be Amity Street.

23 Q Approximately three blocks would you say?

24 A Yes.

25 Q During those three blocks, did you see Mr.

P. O. Louard - People - cross/Ms. Burke

1 khalifa?

2 A No.

3 Q And you didn't see Mr. McGriff, correct?

4 A No, I did not.

5 Q After you got to Amity, what did you do?

6 A I made a left on Amity which is going back  
7 eastbound.

8 Q And on Amity, after you made the left, did you  
9 see Mr. Khalifa?

10 A No.

11 Q Did you see Mr. McGriff?

12 A No, I did not.

13 Q Did you travel the full block on Amity?

14 A I traveled to Court Street.

15 Q What was the cross street?

16 A Amity to Court Street.

17 Q Amity back to Court Street?

18 A Yes.

19 Q On the corner of Court and Amity, did you  
20 encounter Mr. Khalifa?

21 A No.

22 Q Did you encounter Mr. McGriff?

23 A No, I did not.

24 Q Did you turn at that time?

25 A Yes, I made a quick left the wrong way on Court



P. O. Louard - People - cross/Ms. Burke

1 Street which would be northbound.

2 Q So you came back northbound on Court Street.  
3 Were your lights on?

4 A Yes.

5 Q Siren?

6 A Yes.

7 Q When you came up Court between Amity and what  
8 block?

9 A Well, I made a quick left and a right onto  
10 Dean. The street staggers. (Indicating.)

11 Q Indicating an L or upsidedown sideways Z.

12 So you are on Dean Street. Are you going the  
13 right way on Dean Street?

14 A Yes.

15 Q Not against traffic, correct?

16 A No.

17 Q Are your lights still on?

18 A Yes.

19 Q Are your sirens still on?

20 A Yes, they are.

21 Q On Dean Street, that's where you encounter Mr.  
22 khalifa?

23 A Yes, I did.

24 Q Was he close to the corner or in the middle of  
25 the block?

P. O. Louard - People - cross/Ms. Burke

1 A He was closer to Boerum Place which is the next  
2 street up eastbound.

3 Q So further up the block?

4 A Yes.

5 Q And at the time that you saw him, he had on  
6 this green shirt?

7 A Yes, he did.

8 Q Was he carrying anything else with him?

9 A No, I didn't observe him carrying anything  
10 else.

11 Q Did you observe him with a second shirt or  
12 sweater?

13 A Not that I recall.

14 Q And it was at that time that you told him to  
15 get on the ground, correct?

16 A Yes.

17 Q But he didn't do it?

18 A No, he did not.

19 Q You told him several times repeatedly to get  
20 down on the ground, correct?

21 A Yes, I did.

22 Q Eventually he did get down on the ground,  
23 correct?

24 A Yes, he did.

25 Q And you left him there?

P. O. Louard - People - cross/Ms. Burke

1 A Yes.

2 Q Because the ambulance had come?

3 A They were following the same route we were  
4 following so they were there, also.

5 Q So the ambulance was there prior to you leaving  
6 Mr. Khalifa?

7 A Yes.

8 Q Did you observe him go into the ambulance?

9 A No, I did not.

10 Q That's because you were looking for  
11 Mr. McGriff?

12 A Yes.

13 MS. BURKE: One moment Your Honor.

14 (Pause.)

15 MS. BURKE: Nothing further, Your Honor.

16 MR. MOTTOLA: I have no redirect, no.

17 THE COURT: Officer, you may step down.

18 Thank you very much.

19 MS. BURKE: They are mine, Your Honor.

20 THE COURT: Only take what you brought  
21 with you. Thank you very much.

22 MR. MOTTOLA: People call Ashley Reyes.

23 THE COURT OFFICER: Ready for the witness,  
24 Your Honor?

25 THE COURT: Yes, thank you.

A. Reyes - People - direct

1 THE COURT OFFICER: Witness entering.  
2 (Witness enters courtroom.)

3 THE COURT CLERK: Face me and raise your  
4 right hand.

5 A S H L E Y R E Y E S , a witness called by and on  
6 behalf of the People, having first been duly sworn,  
7 testifies as follows:

8 THE COURT CLERK: Please be seated. Get  
9 yourself comfortable. Watch the chair. It's on  
10 wheels.

11 Keep your voice up. State your name and  
12 spell your name for the record.

13 THE WITNESS: Ashley Reyes, A-s-h-l-e-y  
14 R-e-y-e-s.

15 THE COURT: Mr. Mottola when you are  
16 ready.

17 Keep your voice up so they can hear you in  
18 the empty back row.

19 DIRECT EXAMINATION BY

20 MR. MOTTOLA:

21 Q Good afternoon, Ms. Reyes. How old are you?

22 A 27.

23 Q Are you currently employed?

24 A Yes, I am.

25 Q I want to direct your attention to August 11,

A. Reyes - People - direct

1 2015.

2 A Okay.

3 Q Were you employed on that date?

4 A Yes, I was.

5 Q What was your job that day?

6 A I was an independent contractor.

7 Q For which company?

8 A For Verizon.

9 Q So I want to direct your attention to  
10 approximately ten after 1:00 in the afternoon on August 11,  
11 2015.

12 where were you at that time?

13 A I was on the street in front of -- in between  
14 Soul Cycle and a candy store called Sugar.

15 Q When you say you were on the street, do you  
16 know the name of the street you were on?

17 A It was Court Street.

18 Q Is that here in Brooklyn?

19 A Yes.

20 Q Were you with anyone else?

21 A I was with a co-worker at the time and another  
22 person I was speaking to on the street, but that I did not  
23 know.

24 Q When you say you were on the street, were you  
25 on the street or on the sidewalk?



A. Reyes - People - direct

1 A On the sidewalk in between those two stores.

2 MR. MOTTOLA: Officer, if I can have what's  
3 in evidence, People's 3, 4, 5, 6 those photos.

4 Q Ms. Reyes, next to you there is a laser  
5 pointer. I am going to publish -- this is People's 5.

6 THE COURT: Hold it in your hand and press  
7 the red button and you can see the dot.

8 This is which photo?

9 MR. MOTTOLA: People's 5. Officer, if you  
10 can hit the light, please. Thank you.

11 Q Ms. Reyes, looking at this street here, if  
12 possible, can you indicate where you were standing on the  
13 street with the laser pointer?

14 A So I was behind this police truck here in this  
15 area.

16 Q So indicating it's the third doorway from the  
17 bigger gray building on the right?

18 A Yes, not too far from the Department of  
19 Education on the corner.

20 Q At that time, what type of location was that?

21 A At the time, it was -- it wasn't a business yet  
22 there was construction there. So the nearest store that I  
23 was next to was the Soul Cycle.

24 Q If you can again just please indicate?

25 A Right here. (Indicating.)

A. Reyes - People - direct

1 Q So you are standing in this location. Are you  
2 in front of the doorway?

3 A About five feet from it.

4 Q So were you closer to the street?

5 MS. BURKE: Objection, Your Honor.

6 THE COURT: Overruled. When you hear  
7 someone say objection, you have to wait until I say  
8 you can answer.

9 A So I was not directly by the door, but not by  
10 the street. So in between.

11 MR. MOTTOLA: You can put the lights on,  
12 officer. Thank you.

13 Q So while you were standing at that location,  
14 what, if anything, happened?

15 A Sorry say again.

16 Q What, if anything, happened while you were  
17 standing where you indicated?

18 A You mean like what happened or what if  
19 anything?

20 Q You were working, right?

21 A Yeah, exactly. I was working.

22 Q Who were you working with?

23 A My co-worker. And like I said, I was having a  
24 friendly conversation with a potential client on the  
25 street.

A. Reyes - People - direct

1 Q while you are having that conversation.

2 A while I was having that conversation, I noticed  
3 that two people were running towards me and it caught my  
4 reaction to what was happening.

5 Q The two people that were running towards you,  
6 which direction were they coming from?

7 A From my left hand side.

8 Q So can you use the photo?

9 A So if my back was towards here, towards this  
10 door directly, it was my left hand side, meaning coming  
11 from -- towards the location of the Department of Education  
12 on the corner.

13 Q Indicating again the same location you pointed  
14 to earlier. That's where you were standing and the two men  
15 came from?

16 A From this direction, correct.

17 Q Were you facing the street at this time?

18 A Yes, I was.

19 Q And what, if anything, did you notice about  
20 these two men?

21 A Prior to the incident happening, they were just  
22 yelling on the street.

23 Q Could you tell which of these two men were  
24 doing the yelling?

25 A Yes, the gentleman in the green shirt was

A. Reyes - People - direct

1 yelling.

2 Q Could you describe these two men, what they  
3 looked like?

4 A Yes. The one gentleman was wearing a green  
5 shirt and the other gentleman was like professionally  
6 dressed, vest and button up outfit with a hat on.

7 Q To the best of your ability could you describe  
8 what you believe to be the race of these two men?

9 A The gentleman in the green shirt was Caucasian  
10 and the gentleman in the button up suit was African  
11 American.

12 Q What did you observe these two men doing after  
13 you heard the yelling?

14 A After the yelling, they seemed to be down the  
15 street towards the Department of Education which is when I  
16 noticed them coming towards me again. So when I noticed  
17 the commotion, I immediately tried to move myself out of  
18 the way.

19 Q When you first noticed this commotion, how  
20 close were you to these two men?

21 A Definitely within walking distance, maybe 15  
22 feet or so.

23 Q Was there anything on the street that was  
24 blocking your view of the two men?

25 A No.

A. Reyes - People - direct

1 Q what happened after that?

2 A It was when I noticed that two people were  
3 running towards me that I decided to move slightly out of  
4 the way in front of the store that was with the  
5 construction. I then noticed that the one gentleman was  
6 chasing the other gentleman and there was a knife in his  
7 hand. That's when the one person fell into the  
8 construction site of the store.

9 At that point the other gentleman was already  
10 stabbing him at that point and you could see there was  
11 blood coming out.

12 Q which gentleman was chasing which other  
13 gentleman?

14 A So it was the gentleman in the suit and --  
15 chasing the person in the green shirt.

16 Q So the record is clear the race of the person  
17 who was chasing?

18 A African American chasing the Caucasian man.

19 Q How close did they get to you?

20 A At that point they were about five feet from  
21 me.

22 Q Was there anything blocking your view of these  
23 two men?

24 A No.

25 Q At which point did you see this knife that you



A. Reyes - People - direct

1 mentioned?

2 A When they were directly next to me.

3 Q Did you notice anything about the man in green  
4 about his physical condition at that point?

5 A He seemed to be homeless.

6 MS. BURKE: Objection, Your Honor.

7 THE COURT: Sustained.

8 Q I will narrow it.

9 Did you notice any injuries or anything like  
10 that?

11 A Prior?

12 Q When they were within five feet of you?

13 A Yes.

14 Q What type of injuries did you observe?

15 A A head injury and body injury. You could see  
16 there was blood.

17 Q When you say body injury, where was the body  
18 injury?

19 A It looked like it was somewhere around the  
20 chest area.

21 Q The man in the green shirt -- withdrawn.  
22 You testified someone fell into the construction  
23 area. Could you elaborate on that?

24 A Because there was an open door and the  
25 gentleman in the green shirt was running away, he ran into

A. Reyes - People - direct

1 this door and he fell into the door where the construction  
2 site was. So he was running away from the situation.

3 Q So after the man in the green shirt ran inside,  
4 how close was he to you?

5 A At that point maybe ten feet because now he was  
6 inside.

7 Q Could you see inside this construction site?

8 A Not from where I was.

9 Q Could you tell if there were other people  
10 inside the construction site?

11 A Yes.

12 Q What did you observe next?

13 A At that time, after he fell into the open door  
14 with the store, that was the gentleman in the green. The  
15 other gentleman in the suit had gotten up and ran away. At  
16 that point, the construction men had come out directly  
17 after the guy had fell in the green shirt to see what was  
18 going on.

19 MS. BURKE: Objection.

20 THE COURT: Sustained.

21 Q We are going to break it down. Okay?

22 A Uh-huh.

23 Q The man in the green shirt goes into the  
24 construction site.

25 A Yes.

A. Reyes - People - direct

1 Q What happens immediately after that?

2 A The gentleman in the suit came out and ran  
3 away.

4 Q Did you see, prior to that, did you see the  
5 African American gentleman do anything with the knife?

6 MS. BURKE: Objection. Asked and  
7 answered.

8 THE COURT: Overruled.

9 A Nothing other than using the knife to stab the  
10 gentleman in the green.

11 Q How many times did you see the man with the  
12 knife stab the man in the green?

13 A Three.

14 Q Do you recall where the man in the green was  
15 stabbed?

16 A Yes.

17 Q Where?

18 A In the head and chest.

19 Q Do you recall at any time seeing the man in the  
20 green holding any kind of weapon?

21 A No.

22 MS. BURKE: Objection.

23 THE COURT: Overruled.

24 Q Do you recall the man in the green holding any  
25 object like a brick or rock?

A. Reyes - People - direct

1 A No.

2 Q Do you recall the man in the green at any time  
3 striking the man with the knife to your memory?

4 A No.

5 Q Which direction did the man with the knife run?

6 A Towards my left which was towards, again, the  
7 direction of Department of Ed.

8 Q Where were you standing when he came out of the  
9 construction site?

10 A Still on the same place on the street in  
11 between the street in front of that store.

12 Q What did the man with the knife do when he came  
13 out of the construction site?

14 A He just ran towards the direction away from  
15 where I was.

16 Q Did you see what happened to the man in green  
17 after that?

18 A He got up and tried to find help at that time.

19 Q By saying he tried to find help, what, if  
20 anything, did he observe?

21 A He was just yelling because he was just kind of  
22 holding where he had gotten injured. And was just trying  
23 to run in that same direction to see if he could find  
24 someone to help him.

25 MS. BURKE: Objection.

A. Reyes - People - cross/Ms. Burke

1 THE COURT: Sustained, jury. That last  
2 comment is stricken and the jury is instructed to  
3 disregard it.

4 Q Did you actually see the man in green walk in  
5 any direction?

6 A Yes.

7 MS. BURKE: Objection.

8 THE COURT: Overruled.

9 Q In which direction did that man go?

10 A The same direction which was to the left of me.

11 Q Did you have any other interaction with either  
12 of those two men after that incident?

13 A No.

14 Q Did you know either of those two men prior to  
15 that day?

16 A No.

17 MR. MOTTOLA: Thank you, Ms. Reyes. I  
18 have no further questions.

19 THE COURT: Ms. Burke?

20 CROSS-EXAMINATION BY

21 MS. BURKE:

22 Q You testified there was a bunch of yelling  
23 prior to you seeing the encounter between the two men; is  
24 that correct?

25 A Yes.



A. Reyes - People - cross/Ms. Burke

1 Q Did you hear what was being said?

2 A No, I did not.

3 Q Do you know who was yelling?

4 A Yes, I do.

5 Q Who was yelling?

6 A The gentleman in the green shirt.

7 Q Do you know if he was yelling at the  
8 professionally dressed gentleman?

9 A No.

10 Q But you didn't hear what he was yelling?

11 A No.

12 Q And how close to you were they when you first  
13 heard the man in the green shirt yelling?

14 A I would say maybe eight to ten feet.

15 Q When you heard the yelling, were you focused  
16 only on what was happening between the two men?

17 A No, I was also focused on speaking to the  
18 person in front of me.

19 Q You say that the black man had a knife and you  
20 saw him stab the man in the green shirt three times?

21 A Correct.

22 Q Did you see if the man in the green shirt had  
23 anything at all in his hand?

24 A No, he only had clothing on himself. It was  
25 just only -- he had nothing in his hands.

A. Reyes - People - cross/Ms. Burke

1 Q Nothing at all?

2 A Nothing.

3 Q You said they fell into a construction site at  
4 a store, that's correct?

5 A Yes.

6 Q How long were they in there?

7 A Ten, 15 seconds.

8 Q When you saw the black man with the knife, did  
9 you run?

10 A No.

11 Q Did you call 911?

12 A No.

13 Q Did you scream?

14 A No.

15 Q After the black man came out of the store, you  
16 say he ran toward 65 Court Street, correct?

17 A Yes, from what I know, that's from my  
18 knowledge, that's the direction of Department of Education,  
19 as a landmark.

20 Q And the man in the green shirt went after him,  
21 correct?

22 A Correct.

23 Q He was running as well?

24 A No.

25 Q Not running at all?

A. Reyes - People - cross/Ms. Burke

1 A No --

2 Q Yes or no?

3 A No.

4 Q So, when the man in the green shirt emerged  
5 from the store, did you hear him say anything?

6 A No.

7 Q Was he yelling?

8 A Yes.

9 Q But you didn't hear what he said?

10 A No.

11 Q You said you were about --

12 A Five feet from him.

13 Q Five feet away, but you didn't hear what he  
14 said?

15 A It wasn't anything specific. It was just  
16 groans of pain.

17 MS. BURKE: Objection, Your Honor?

18 THE COURT: Sustained.

19 MS. BURKE: Move to strike.

20 THE COURT: Jury is to disregard that.

21 Ms. Reyes, you can only testify what you saw, you  
22 heard. You cannot say what you think somebody else  
23 was doing or feeling, et cetera. Okay?

24 THE WITNESS: Sure.

25 Q The man in the green shirt, you say he walked

A. Reyes - People - cross/Ms. Burke

1 up Court Street?

2 A Yes.

3 Q Did you see him stop at all?

4 A No.

5 Q He just continued to walk up Court Street?

6 A Yes.

7 Q When did you lose sight of him?

8 A Just as soon as he was out of my sight, I  
9 didn't see him again.

10 Q When did you lose sight of him?

11 A After I guess the building. You can't see  
12 around the building. So, I lost sight of him as soon as he  
13 reached the corner of that street.

14 Q Did he stop at the corner?

15 A I think. Let me see, he did not stop at the  
16 corner.

17 Q He continued to go?

18 A Yes.

19 MS. BURKE: Nothing further. One moment  
20 Your Honor.

21 (Pause.)

22 MS. BURKE: Nothing further.

23 THE COURT: Any redirect?

24 MR. MOTTOLA: No, Your Honor.

25 THE COURT: Ms. Reyes, you may step down.

A. Reyes - People - cross/Ms. Burke

1 Thank you very much.

2 MR. MOTTOLA: Can we approach?

3 THE COURT: Come on up.

4 (Whereupon, there is a discussion held off  
5 the record at the bench between the assistants  
6 district attorney, defense counsels and the Court.)

7 THE COURT: All right, ladies and  
8 gentlemen, we are going to take a five minute or so  
9 recess, let you stretch your legs, use the facilities  
10 if you need to. All of us can do that.

11 Please don't discuss the case among  
12 yourselves. See you back in just a little bit.  
13 Thank you very much.

14 (Jury exits courtroom.)

15 (Recess taken.)

16 (Jury enters courtroom.)

17 THE COURT CLERK: Jury panel is present  
18 and properly seated. Both sides waive the jury roll  
19 call?

20 MR. MOTTOLA: So waived.

21 MS. BURKE: So waived.

22 THE COURT: Mr. Mottola?

23 MR. MOTTOLA: People call Kevin Haynes.

24 THE COURT OFFICER: Witness entering.

25 (Witness enters courtroom.)



K. Haynes - People - direct

1 THE COURT CLERK: Face me. Raise your  
2 right hand.

3 K E V I N H A Y N E S , a witness called by and on  
4 behalf of the People, having first been duly sworn,  
5 testifies as follows:

6 THE COURT CLERK: Please be seated. Watch  
7 that chair. It's on wheels.

8 State your name for the record and spell  
9 your name.

10 THE WITNESS: K-e-v-i-n, H-a-y-n-e-s.

11 DIRECT EXAMINATION BY

12 MR. MOTTOLA:

13 Q Good afternoon, Mr. Haynes.

14 A Good afternoon.

15 Q By whom are you currently employed?

16 A Police Department, New York City Police  
17 Department.

18 Q How long have you been a member of NYPD?

19 A 21 years.

20 Q In what capacity do you work for NYPD?

21 A Tape and records technician.

22 Q Are you a police officer?

23 A No, I am not.

24 Q What is your official command?

25 A Communications Division and that division we

K. Haynes - People - direct

1 create tapes and audio for the department.

2 Q How long have you worked in the communication  
3 division of the NYPD?

4 A 21 years.

5 Q What is your job description now? What do you  
6 do?

7 A Okay, subpoenas come in, you know, basic to my  
8 department. And we have to create audio for transmission  
9 from 911 calls and transmission that, you know, units have  
10 with the dispatchers for different agencies on a regular  
11 basis. That would be my duty at this time.

12 Q Are all 911 calls in the City of New York  
13 recorded by the NYPD?

14 A Yes.

15 Q Do you know how they are recorded?

16 A It's through a digital wave file.

17 Q Did your office receive a subpoena from my  
18 office, the Kings County District Attorney's Office,  
19 regarding a 911 call that was made some time in the  
20 afternoon of August 11, 2015 in relation to an incident  
21 near Court Street and Livingston Street?

22 A Yes, that is correct.

23 Q Pursuant to that request, was a search made by  
24 someone in your office?

25 A Yes.

K. Haynes - People - direct

1 Q Did that person pursuant to that subpoena make  
2 and prepare a tape from that search from the master tape?

3 A Yes.

4 MR. MOTTOLA: Your Honor, I would ask the  
5 witness be shown this disk and it be marked People's  
6 11 for identification.

7 THE COURT: Okay.

8 Q Mr. Haynes, look at that disk. Do you  
9 recognize that disk?

10 A Yes.

11 Q How do you recognize it?

12 A Because a little while ago, I listened to it  
13 and I signed it. So I am very aware of that tape.

14 Q Now, was the recording on that tape, was it  
15 made from the New York City Police Department, the master  
16 tape?

17 A That is correct, yes.

18 Q And does that CD contain the entirety of one  
19 specific 911 call which was made regarding Court and  
20 Livingston Street approximately 1:00 p.m. on August 11,  
21 2015?

22 A That is correct, yes.

23 Q Was People's 11 for identification, that disk,  
24 was it prepared in the ordinary course of business of the  
25 communication division of the NYPD?

K. Haynes - People - direct

1 A Yes.

2 Q Is it in the regular course of business of the  
3 NYPD to keep, maintain and produce the master tape?

4 A Yes.

5 Q And is it also the regular course of business  
6 of the NYPD to keep, maintain and produce duplicate tapes?

7 A Yes, that's by request for subpoenas.

8 Q Are you, in your official capacity, are you a  
9 custodian of the master tape?

10 A That is correct, because the master tape is  
11 basically kept by the police department. So that is  
12 correct.

13 Q The recording that's on Number 11 for  
14 identification, the copy, is that an exact copy of that  
15 specific 911 call from the master tape?

16 A Yes, yes, it is.

17 MR. MOTTOLA: I would ask what was marked  
18 People's 11 for identification be entered and  
19 received as People's 11 in evidence.

20 MR. WITTWER: I am objecting based on it  
21 violates my client's Sixth Amendment right to  
22 confront witnesses against him.

23 THE COURT: That objection is overruled.  
24 It will be marked People's 11 in evidence.

25 THE COURT OFFICER: So marked.



K. Haynes - People - cross/Mr. Wittwer

1 MR. MOTTOLA: I will play it.

2 (Recording played.)

3 MR. MOTTOLA: Thank you, Mr. Haynes. I  
4 have no further questions.

5 THE COURT: Cross?

6 CROSS-EXAMINATION BY

7 MR. WITTWER:

8 Q Good afternoon, Mr. Haynes.

9 A Good afternoon, sir.

10 Q In your employment at the NYPD, you're trained  
11 in protocols that 911 operators use when they receive calls  
12 to 911 correct?

13 A Yes.

14 Q And you are familiar with the sorts of  
15 information the 911 operator attempts to elicit from a  
16 caller in the course of their duties in taking and  
17 recording the call?

18 A That is correct.

19 Q One of the things that a 911 operator attempts  
20 to do when they receive a call is determine the identity of  
21 the person who is calling, correct?

22 A What do you mean?

23 MR. MOTTOLA: Objection.

24 THE COURT: Are you or are you not  
25 objecting?



K. Haynes - People - cross/Mr. Wittwer

1 MR. MOTTOLA: I am.

2 THE COURT: I can't hear you when you are  
3 sitting.

4 MR. MOTTOLA: Sorry. Objection.

5 THE COURT: Sustained.

6 Q It's important when you receive a 911 call to  
7 know the identity of the caller?

8 A Why is that?

9 Q I am asking questions for you to answer. So if  
10 you can answer.

11 A The whole reason when you receive a 911 call,  
12 the whole significance of taking information from the  
13 caller, you are trying to get the most pertinent  
14 information from the caller so they can receive help as  
15 soon as possible.

16 THE COURT: I will ask you to respond to  
17 counsel's questions and then if the DA has questions  
18 he wants to ask after, he will do that.

19 MR. WITTWER: Thank you, Your Honor.

20 Q So Mr. Haynes pertinent information could  
21 include, who are you, couldn't it?

22 A What is your name? I am trying to understand  
23 what you are saying. What do you mean? What do you mean  
24 when you are asking this question.

25 Q Again, Mr. Haynes, I am going to ask you

K. Haynes - People - cross/Mr. Wittwer

1 questions. You can answer them?

2 A I am trying to answer them. I am not  
3 understanding per se how you are trying to come across to  
4 me. That's why I am asking you that.

5 Q When a person calls 911 --

6 A The first thing you ask --

7 THE COURT: Mr. Haynes, please let counsel  
8 finish his questions.

9 THE WITNESS: Not a problem. I am trying  
10 to answer.

11 Q I am going to ask a question and pause and give  
12 you an opportunity to answer?

13 A Not a problem.

14 Q When a person calls 911, the dispatcher  
15 attempts to obtain the identity of that person don't they?

16 A Okay. For starters, the dispatcher does not  
17 answer the phone, 911 operator answers the phone.  
18 Dispatchers communicate with police officers. Let me  
19 explain that to you.

20 Q I am not asking you that, but I will rephrase  
21 my question. Thank you.

22 When a person calls 911, the operator who  
23 answers the phone --

24 A Exactly.

25 Q -- should attempt to identify who is calling,

K. Haynes - People - cross/Mr. Wittwer

1 correct?

2 A When the first time the 911 operator receives a  
3 call, the first thing they are trying to identify is where  
4 is the emergency along the line.

5 Q Respectfully, I am not asking about the  
6 priority which information is obtained. I am asking about  
7 whether a 911 operator should at some point find out --

8 A At some particular time that can be asked, but  
9 that's not -- that really isn't important quite honestly.

10 Q So it's your professional opinion that when  
11 someone calls 911 it is not important to find out who that  
12 person is?

13 A That's not what I am saying. What I am saying  
14 to you the most important thing --

15 THE COURT: Mr. Haynes just a moment,  
16 please. Approach, Counsel.

17 (Whereupon, there is a discussion held off  
18 the record at the bench between the assistants  
19 district attorney, defense counsels and the court.)

20 Q Mr. Haynes, if a person calls 911, the operator  
21 attempts to locate and then send assistance to their  
22 location, correct?

23 A Yeah, that's correct.

24 Q And it's important to know who that person is  
25 and why they are calling correct?

Proceedings

1 MR. MOTTOLA: Objection.

2 THE COURT: Sustained.

3 MR. WITTWER: Nothing further.

4 MR. MOTTOLA: No redirect.

5 THE COURT: Mr. Haynes, thank you very  
6 much. You may step down.

7 MR. MOTTOLA: Can I approach?

8 THE COURT: Sure. Come up, counsel.

9 (Whereupon, there is a discussion held off  
10 the record at the bench between the assistants  
11 district attorney, defense counsels and the Court.)

12 THE COURT: All right, ladies and  
13 gentlemen. Thank you for your patience. I have  
14 another matter that I need to attend to where the  
15 attorneys are coming in a little bit later.

16 As I indicated, I am not going to have you  
17 sit around and wait while I address the other cases.  
18 So I will send you on your way for tonight. I will  
19 ask you to be back tomorrow morning, 9:30 sharp in  
20 the jury room to continue. I will remind you there  
21 were some prospective jurors who asked about having  
22 Friday afternoon off. I don't recall if any of you  
23 were asking that question, but I did represent that  
24 we would work half a day tomorrow and to the extent  
25 that everyone has relied on that statement that I

## Proceedings

1 made the other day, I will honor that. So we will  
2 work half a day tomorrow until one o'clock, and  
3 adjourn for further proceedings Monday.

4 Bring tea. I heard it's going to be  
5 colder tomorrow than today. In the interim, don't  
6 discuss the case, no independent research, nothing at  
7 all about the case.

8 Thank you so much for your continued  
9 patience and your attention. I will see you tomorrow  
10 morning. Thank you very much.

11 (Jury exits courtroom.)

12 THE COURT: So people had asked for an  
13 opportunity to make a decision about resting tomorrow  
14 morning, et cetera.

15 MR. MOTTOLA: Yes.

16 THE COURT: Then we will have further  
17 proceedings depending what happens. Again, working  
18 half a day tomorrow and then depending upon whether  
19 you are calling witnesses how long those witnesses  
20 take, et cetera, we will work out scheduling for  
21 summations and the precharge conference.

22 MS. BURKE: For clarification, the medical  
23 records have been stipulated to and a video have been  
24 stipulated to. We can use them at any time during  
25 our case in chief? I want to make sure.



## Proceedings

1 MR. MOTTOLA: Regarding the medical  
2 records, the Court I think gave some clarity no one  
3 is going to read from them.

4 THE COURT: What do you mean no one is  
5 going to read from them?

6 MR. MOTTOLA: The medical records are in  
7 evidence. I was under the impression the witnesses  
8 weren't going to testify from them.

9 If Ms. Burke intends to point things out  
10 in summation that's --

11 THE COURT: I don't know what the  
12 witnesses are going to be asked, et cetera. I am  
13 assuming we are talking about perhaps the EMT. I  
14 don't know what is going to be asked of whom. I will  
15 have to rule on it. I think the only question that  
16 came up informally was whether at a minimum civilian  
17 witnesses, whether eyewitnesses were going to be  
18 asked about whether, what they observed was  
19 consistent with what was in the medical records and  
20 we sort of cleared up that wasn't going to happen.

21 Beyond that, I don't believe I made any  
22 specific ruling, any kind of blanket ruling certainly  
23 and depending what is asked whom when, you know --

24 MS. BURKE: The specific question is  
25 because they are in evidence, Counsel can read from

Proceedings

1 the minutes at any time to the jury.

2 THE COURT: Yeah.

3 Bail is continued. Thank you very much.

4 See you 9:30 tomorrow.

5 (Trial adjourned to December 16, 2016.)

6

7 \* \* \* \* \*

8 This is to certify that the foregoing is a true and  
9 accurate transcript of the stenographic minutes taken  
10 within.

11

12

13

14



15

MICHELE DENEZZA, RPR

16

Senior Court Reporter

17

18

19

20

21

22

23

24

25